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NEW YORK STATE PUBLIC EMPLOYMENT
RELATIONS BOARD

In the Matter of the Arbitration Between
CITY OF LACKAWANNA
and
LACKAWANNA POLICE BENEVOLENT ASSOCIATION

OPINION AND AWARD
AWARD OF ARBITRATION
PANEL

CASE # CA 0044
M75-53

Pursuant to the provisions of the Civil Service Law, Section 209.4, The Public Employment Relations Board, on October 10, 1975 designated the following individuals to serve as a Public Arbitration Panel in this proceeding:

Margery Gootnick, Esq.,:Chairman and Public Panel Member

Stanley Janus: Director of Public Safety, City of Lackawanna
Employers Panel Member

Roman Catuzza: Lackawanna Police Benevolent Association
President, Employees Panel Member

Hearings were held November 12, 1975 and November 24, 1975 at which time the parties were afforded full opportunity to offer evidence and argument and to present, examine and cross examine witnesses. The Lackwanna Police Benevolent Association was represented by John F. Collins, Esq.; the City by Earl R. Knight. At the request of the City a taped record was made. The City representative was given additional time by the panel Chairman to submit a post arbitration brief on issues raised at the hearing. The Panel thereafter met in executive session on November 24 and December 1, 1975. At the meetings the Panel discussed the evidence presented, the exhibits offered, the Fact-Finder's report, the past bargaining history and the statutory guidelines of Section 209.4 as follows:

(v) the public arbitration panel shall make a just and reasonable determination of the matters in dispute. In arriving at such determination, the panel may, but shall not be bound to, adopt any recommendation made by the fact-finder, and shall, so far as it deems them applicable, take into consideration the following and any other relevant circumstances:

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 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. such other factors which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment.

The current contract between the City of Lackawanna and the LPBA expired on December 31, 1974. Fact Finding hearings were held on April 17, 22 and 24 by Samuel Cugalj and a report was issued on May 12, 1975.

At the outset of these hearings there were twenty-four Issues certified for consideration by the Panel as follows:

- 1. Sick Leave
- 2. Shift Preferential
- 3. Salary
- 4. Duration
- 5. Manning Per Shift
- 6. Service In Higher Class
- 7. Anniversary Date For Promotions
- 8. 30 Day Vacancy Rule
- 9. Uniform Allowance
- 10. Longevity Pay
- 11. Trust Fund
- 12. Work Day-Work Week
- 13. Holidays
- 14. Vacations
- 15. Personal Leave
- 16. Bereavement
- 17. Retirement
- 18. Health Insurance
- 19. Court Time
- 20. Grievance Procedure
- 21. Bill of Rights
- 22. Training Courses
- 23. Union Business
- 24. Mileage Meal and Lodging

3.

As set forth in the accompanying award the parties were able to agree during the course of the hearings that the recommendations of the Fact Finder would be acceptable on twenty (20) issues. Therefore the recommendations of the Fact Finder are hereby unanimously adopted and made binding by this Panel on all of the issues submitted with the exception of the four (4) unresolved issues.

The Arbitration Panel determined that the four unresolved issues to be considered are as follows:

1. Sick Leave
2. Shift Preferential
3. Salary
4. Duration

Of the four issues submitted at the hearing the Panel is unanimous only with respect to Issue 1 Sick Leave and Issue 2 Shift Preferential.

Issue #1 SICK LEAVE

The LPBA rejects the present 22 days of sick leave and points out that the City has argued parity in fringes and that the Lackawanna Fire Department Benevolent Association has 24 sick days in their current contract with 240 days accumulation.

The City points out that Lackawanna is out of line with other areas and is not going to attempt to justify the large number of sick days at this late date. The City also points out that there are fringes enjoyed by the Police which are not in the LFDBA contract and the City further maintains that it is reluctant to increase the number of sick days, a number which is greater at present than that of surrounding and comparable police associations. No persuasive reasons have been advanced for disturbing the recommendations of the Fact-Finder on this issue.

The Panel has unanimously decided that the current contract is competitive and that there is no compelling basis on which to justify any increase in the sick days currently contained in the contract.

Issue #2 SHIFT PREFERENTIAL

Sections 1 and 2 of the Fact-Finder's report on Shift Preferential were withdrawn from consideration by the Arbitration Panel at the initial hearing. At that time, the parties agreed to accept the Fact Finder's recommendations on these sections. The Panel hereby makes that agreement binding.

On Section 3 of Shift Preference the Panel unanimously finds that seniority is to be the determining factor in awarding a policeman his shift preference. Therefore, if a policeman with seniority over another policeman requests assignment to a particular shift, that request must be granted, if made at the proper time and according to an established bidding procedure. Seniority alone shall not be the only factor considered where a shift request is made by a policeman that would involve a special assignment, it being recognized that special assignments are subject to managerial prerogative and do not have to be awarded on seniority alone.

The Panel wishes to state that in making this award on Section three, they are not interpreting the Atleson Arbitration Award of January 14, 1974.

The Panel is unanimous with respect to Issues #1 and 2. The Employer Panel member Mr, Stanley Janus, and the Employee Organization Panel Member Mr. Roman Catuzza, are in agreement with respect to Issues #3 and 4.

The Chairman and Public Panel member, Margery Gootnick, dissents from the award of the majority of the Panel on Issues #3 and 4 as set forth below.

The Chairman's dissent is hereby attached to and made part of this award: Majority Award of Employer Member and Employee Panel Member on Issue #3 and 4 Duration and Salary. The majority of the panel finds that there is ample support in the record to justify and award:

1. a 15% wage increase in patrolman's salaries for the year 1975, retroactive to January 1st, 1975;
2. a 20% wage increase in captains, lieutenants and deputy chief's salaries for the year 1975, retroactive to January 1st, 1975;
3. a 10% wage increase in police matron and police cleaner salaries, retroactive to January 1st, 1975;
4. an additional 10% across the board wage increase for all patrolmen, detectives, lieutenants, captains and deputy chiefs to be effective January 1, 1976; and
5. an additional 10% wage increase for the police matron and police cleaner to be effective January 1st, 1976;
6. that the contract shall be a two (2) year contract commencing on January 1st, 1975, and terminating on December 31st, 1976.

The Panel feels that the above recommendations are in line with the Statutory criteria of Section 209.4 as set forth above.

It is the opinion of the majority Employer and Employee Panel Members that the L.P.B.A. has considered these elements in its presentation and has totally substantiated its case, whereas the City has failed to offer any substantial proof on its inability to pay a wage increase or as to why a wage increase should not be granted which would allow the members of the Lackawanna Police force to gain some type of equality and comparability with surrounding police departments.

Although the Employer and Employee members of the panel are recommending a higher wage increase than that of the Fact-Finder, the panel majority feels that this increase is totally justifiable in this instance. The panel majority (consisting of the Employer and Employee members) has reviewed the Fact-Finder's report which, in itself, recognizes a \$350,000 budget surplus from 1974 to 1975, in addition to \$221,000 in unused Federal Revenue Sharing Funds. The panel also recognizes other available revenue as brought out by the Fact Finder and the L.P.B.A. and uncontroverted by the City. The panel is also concerned about the substantial discrepancy existing between Lackawanna Policeman's wages and those of surrounding police departments as shown in L.P.B.A. exhibit #28. In addition, L.P.B.A. exhibit #8 shows that the City has money available.

1. Exhibit #8 L.P.B.A. Minutes of City Council of September 22, 1975, shows that the City granted a \$4,000 increase for the Comptroller who was earlier granted a \$1,672 in January 1975, giving him a raise of 25% in one year. He also received a 28.98% raise in the past four years as shown in exhibit #17, L.P.B.A.

2. Exhibit #17 L.P.B.A. illustrates the administrators of the City granted raises on a patronage basis, some employees enjoyed per centage raises as high as 36.09% for Mayor and 38% for Councilmen. Other employees received higher per centages ranging from 47.74% to 59.48%. In this same four year period, the employees of the police division were granted only 15% in pay raises during this highly inflationary period.

3. Oral testimony was presented by the L.P.B.A. indicating that morale in the police ranks was very low, mainly because the salaries of the surrounding police departments were far superior to those in Lackawanna and secondly because Lackawanna police had a much more difficult job of law enforcement in their City. The L.P.B.A. presented evidence showing that patrolmen in surrounding police departments earn more than a Captain in the Lackawanna Police Department. Additionally, the plant guards in a local industry earn more than a Lackawanna policeman eventhough their job is much easier and less dangerous.

The City argued that the Lackawanna Police receive substantially higher fringe benefits than surrounding police departments and therefore should not receive higher wages. A review of the fringe benefits of surrounding police departments shows them to be equal to or greater than those enjoyed by the Lackawanna Police. A review of the fact finder reports shows that he granted increases in fringe benefits because they had not changed since 1968.

Evidence was presented by L.P.B.A. 28 comparing wages of comparable communities and private employment to wit: a 15% increase in starting salary of a Lackawanna Patrolman would be \$10,971 compared to \$13,249 in Cheektowaga for 1975 and \$14,176 in '76; \$13,325 in Town of Hamburg for '75 and \$14,155 in '76; in E. Aurora, \$13,217 in '75 and \$14,142 in '76; Town of Tonawanda, \$13,205 in '75 and \$14,261 for '76; in Kenmore between June '75 thru June '76, a salary of \$13,369. Top salary for Lackawanna Patrolman in 1974 is \$11,342 which is \$2000.00 less than all others listed in 1975 and \$3000.00 less in '76.

The chart also indicates a greater injustice being perpetrated on both the Lieuts. whose salary is \$12,137.00 and the Capts. salary of \$12,932.00 --- both lower than all patrolmen salaries listed.

A 20% increase in lieutenant's salary would become \$14,564.00 and still remain lower than all departments listed and approximately \$2000.00 less in 1976. A 20% increase in captain's salary would become \$15,518 and according to the chart would continue to be lower than by as much as \$3,000.00 in 1976.

Dissent of Panel Chairman and Public Member

At the outset of the hearings in this matter the Chairman stated that she was disposed to give great weight to the recommendations of the Fact-Finder and not to disturb them unless the parties advanced highly persuasive reasons for doing so. The Chairman recognizes that this panel was not convened as merely a review and rubber stamp for the recommendations of the Fact Finder. On the other hand, these proceedings are more than a de novo consideration of the issues and evidence, and the burden is on the party seeking to disturb the Fact-Finder's recommendations to show that they are not just and reasonable. If this were not the case, it would be difficult to expect any agreement in a police or fire contract to be reached without almost automatic expectations of submission to an arbitration panel. I have considered the fact that the evidence and arguments with respect to the great majority of issues involved in the questions of Duration and Salary had previously been presented to a Fact-Finder who made recommendations based upon that evidence and those arguments. I find that the Fact-Finder properly considered the full range of criteria as set forth in the statute and that his recommendations should not be disturbed.

The Fact-Finder's report shows that he knew about and specifically considered the lack of a wage increase in 1972; the size of past wage increases; Cost of Living and BLS figures; the high crime rate in Lackawanna; salaries in communities surrounding Lackawanna; the increase in federal, state and local taxes; the failure of

the LPBA to keep pace with wages in surrounding areas; the ability of the employer to pay; recurring budget items which were approved but not expended; budget surpluses; tax rates; increases received since 1972 relative to salaries in comparable communities for similar work and Federal Revenue Sharing Funds. While I am not mandated by statute to accept the Fact-Finder's reasoning or conclusions, I find that he considered all of the evidence and reached a reasonable conclusion. The LPBA data has not persuaded me that there is sufficient reason to substitute my judgement for that of an experienced and careful Fact-Finder who made his judgements based on essentially the same data as that available to the arbitration panel.

I must respectfully disagree with my advocate colleagues who I believe are well intentioned but misguided. Theoretically, if each is representing the interests of those who selected them and since they are in agreement as to the issues of Salary and Duration; this award should not be necessary. Since the advocate members of the arbitration panel are able to agree it should be possible to refer the issues back to the parties to sign a collective bargaining agreement. This is clearly not the case in this impasse.

As the Public Panel Member, I must represent the interest of the public and I find that the interests of the citizens of Lackawanna will not be served by this award. I am not unmindful that the police in Lackawanna, as elsewhere, are charged with the difficult and important task of guarding the safety of the public

and that this task is heightened by the plight of all large cities and worsened by the impact of a depressed economy. I find the award of the Panel to be especially excessive in light of the uncontroverted fact that on August 6, 1975, the LPBA was agreeable to a two year contract with an across the board salary increase of 9% (8% for police matrons) retroactive to January 1, 1975 for the first year and 8% (7% for police matrons) for the second year commencing January 1, 1976. (City Exhibit E letter to Earl Knight, Negotiator for the City of Lackawanna from Mr. John Collins, Esq., Attorney for the LPBA).

Cheektowaga, the Town of Hamburg, East Aurora, the Town of Tonawanda, Kenmore and West Seneca have been referred to by the parties during the hearings. All are in the Buffalo metropolitan area and subject to the same trends in cost of living and unemployment. The following collective bargaining agreements covering the period 1974-1975 and 1975-1976 have been made available to the arbitrator by the parties. Figures from East Aurora were not made available to the Chairman.

<u>CHEEKTOWAGA</u>	<u>CAPTAINS & LIEUTENANTS</u>
1974-1975	5 1/2% increase
1975-1976	9 % increase
<u>CHEEKTOWAGA</u>	<u>PATROLMEN</u>
1974-1975	9 %
1975-1976	10 %
<u>TOWN OF HAMBURG</u>	
1974-1975	11.6 %
1975-1976	6.2 %

TOWN OF TONAWANDA

1974-1975 8 %
1975-1976 8.2 %

KENMORE

1974-1975 5 %
1975-1976 12.2 % (cost of living increase)

WEST SENECA

1974-1975 5.5 %
1975-1976 10 %

The recommendations of 15%, 20% and 10% made by the majority of this Panel are excessive when examined along with the increases in comparable communities.

The economic data submitted by both parties places emphasis on the City's ability to pay the proposed increases. There is ample evidence presented by both parties on budget allocations, sources of revenue, both state and federal, transferability of allocations and labor costs. I am not impressed by the City's inability to pay the proposed increases, but nevertheless, I find them to be excessive in the face of the data presented. Ability to pay is only one of the statutory criteria and the 9% recommended by the Fact-Finder is a substantial recommendation which seeks to ameliorate the disadvantage of the LPBA. It is settled in both the public and private sectors that, regardless of ability to pay, a union cannot be expected to catch up in a single year where comparability has not hitherto existed. This is especially true in the current fiscal climate. While I am sympathetic with the desire of the LPBA to achieve instant comparability, I am mindful and have considered the unprecedented unemployment figures in the Buffalo area. The October 1975 figures show 12.4 for the Buffalo region and the July 1975 figures show

13.8 for the Buffalo region and 13.3 for Lackawanna.

A comparison of wages, fringes, and working conditions requires innumerable judgements. It is questionable that any ad hoc panel can in the limited time available determine all of the relevant and applicable facts. I have not been persuaded to substitute my judgement for that of the Fact-Finder in this case and I am unable to endorse the judgement of the advocate members of this panel.

ISSUE #4 DURATION

The Fact-Finder indicated that he would ordinarily recommend a two year agreement to give much needed stability to the relationship between the parties. He additionally indicated that because of the uncertain economic situation he believes that a short term contract would be more beneficial to the parties.

The City argues that a two year contract had always been assumed, especially in light of the recently concluded two year agreement between the City of Lackawanna and the Lackawanna Fire Department Benevolent Association, and that despite the Fact-Finder's recommendation the possibility of a one year contract had never been seriously entertained until this arbitration hearing.

The LPBA points out that this issue was fully explored in the hearing before the Fact-Finder who took into consideration the inflationary economy, the lack of an adequate salary increase in the past, and the uncertain economic situation. The LPBA

states it would have accepted a two year contract if the increase in the second year had been adequate. I am well aware that the contract year for which the Fact-Finder made recommendations is rapidly drawing to a close. The advantages of a multi-year contract in contributing to the stability of a collective bargaining agreement are too obvious to be detailed here. As I have stated previously in this award, I do not look upon the Fact-Finder's report as scriptural. If the advocate arbitrators had been willing to accept the reasonable figure of 9% for the first year of the contract, I would have been moved to agree with them and would have been prepared to go to 10 % for the second year because of the advantages of a multi-year contract and in a further effort to provide comparability and catch up for a disadvantaged bargaining unit.

However, because of the extraordinarily high recommendations for the first year of the contract, I cannot in good conscience go along with a second year recommendation which with additions of 10 % more, would compound the 15 % figure for patrolmen and the 20 % figure for captains and lieutenants which, I find to be excessive.

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When the legislature ammended the Taylor Law to include binding arbitration for police and fire groups, they stated that it would be a three year experiment. This places a grave responsibility on every arbitrator, both the public and advocate

members, to make sure that the statutory criteria are satisfied and that the Fact-Finder's report is seriously considered. It has long been held by the Courts of this State that Interest Arbitration is to be examined far more closely than arbitration of grievances. This places a heavy burden on this Panel and all other arbitration panels convened under Section 209.4 to be certain that any award is just and reasonable, based on facts, and on the statutory criteria.

I must therefore respectfully dissent from the award of the Employer and Employee Members of this Panel on the Issues of Salary and Duration.

STATE OF NEW YORK

PUBLIC EMPLOYMENT RELATIONS BOARD

CASE # CA 0044, M75-53

 * In the Matter of Arbitration *
 * -between- *
 * City of Lackawanna *
 * and *
 * Lackawanna Police Benevolent Association *
 *

AWARD OF PUBLIC ARBITRATION PANEL

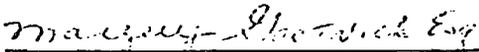
The undersigned Arbitrators, having been designated pursuant to the provisions of Section 209.4 of the New York State Civil Service Law, and having duly heard the proofs and allegations of the parties, hereby make the following

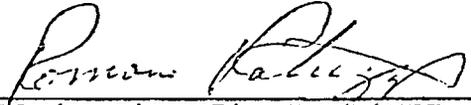
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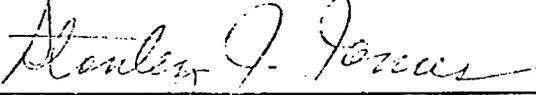
The terms and conditions of employment specified as "not agreed upon" in the petition for Compulsory Interest Arbitration filed by the Unions are decided as follows:

1. At the hearing the parties agreed to abide by the Fact-Finder's report on Issues #5-24 as set forth on page 2 of this award. These agreements are hereby adopted and made binding as a part of this award.
2. The demand for additional sick leave is denied
3. The Panel unanimously finds that seniority is to

be the determining factor in awarding a policeman his shift preference. Therefore, if a policeman with seniority over another policeman requests assignment to a particular shift, that request must be granted, if made at the proper time and according to an established bidding procedure. Seniority alone, shall not be the only factor considered where a shift request is made by a policeman that would involve a special assignment, it being recognized that special assignments are subject to managerial prerogative and do not have to be awarded on seniority alone.

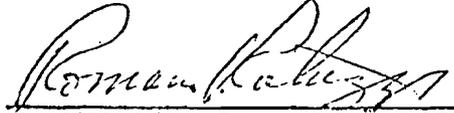

MARGERY GOOTNICK, ESQ., PUBLIC
PANEL MEMBER AND CHAIRMAN

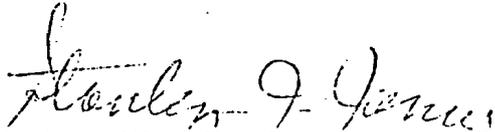

ROMAN CATUZZA, EMPLOYEE
ORGANIZATION PANEL MEMBER


STANLEY JANUS, EMPLOYER PANEL
MEMBER

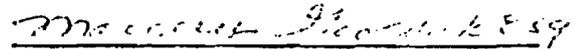
4. a 15% wage increase in patrolman's salaries for the year 1975, retroactive to January 1, 1975;
5. a 20% wage increase in captains, lieutenants and deputy chief's salaries for the year 1975, retroactive to January 1, 1975;
6. a 10% wage increase in police matron and police cleaner salaries, retroactive to January 1, 1975;
7. an additional 10% across the board wage increase for all patrolmen, detectives, lieutenants, captains and deputy chiefs to be effective January 1, 1976; and .

8. an additional 10% wage increase for the police matron and police cleaner to be effective January 1, 1976;
9. that the contract shall be a two (2) year contract commencing on January 1, 1975, and terminating on December 31, 1976.


 ROMAN CATUZZA, EMPLOYEE
 ORGANIZATION PANEL MEMBER


 STANLEY JANUS, EMPLOYER PANEL
 MEMBER

As noted in the body of this award the Chairman and Public Panel Member dissents from the award on salary and Duration.


 MARGERY GOOTNICK, ESQ., PUBLIC
 PANEL MEMBER AND CHAIRMAN

STATE OF:

COUNTY OF:

On this 10 day of December, 1975 before me personally came and appeared Margery Gootnick to me known and known to me to be the individual described in and who executed the foregoing instrument and she acknowledged to me that she executed the same.

Margery Gootnick Esq

Ronald L. James

STATE OF: New York

COUNTY OF: Genesee

RONALD L. JAMES
NOTARY PUBLIC - STATE OF N.Y.
QUALIFIED IN ERIE COUNTY
BY COM. EXPIRES APR 30, 1977

On this 10 day of Dec., 1975 before me personally came and appeared Stanley Janus to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

Stanley J. Janus

Brenda L. Emens
Notary Public

STATE OF: New York

COUNTY OF: Genesee

BRENDA L. EMENS
Notary Public—State of New York
Qualified in Genesee County
My commission expires March 30, 1977

On this 10 day of Dec., 1975 before me personally came and appeared Roman Catuzza to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

Roman Catuzza

Brenda L. Emens
Notary Public
BRENDA L. EMENS
Notary Public—State of New York
Qualified in Genesee County
My commission expires March 30, 1977

