

AUG-4 1977

CONCILIATION

STATE OF NEW YORK

PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of the Impasse Between

TOWN OF TONAWANDA

and

TOWN OF TONAWANDA POLICE CLUB

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COMPULSORY  
ARBITRATION  
PANEL'S  
OPINION AND DETERMINATION

Case Numbers:  
CA-0126; M76-607

Appearances:

Town of Tonawanda

James L. Forsaith - Assistant Chief  
Jack L. Morris - Assistant Chief  
Norman J. Stocker - Director of  
Labor Relations  
Eugene D. Mahoney - Accountant

Town of Tonawanda Police Club

John D. Klaus  
George S. Strusa  
Jim Stemfliger  
Donald Miller  
Fred J. Horba  
Robert C. Berlinghoff  
Robert J. Mayer  
Nicholas J. Sargent, Esq.

Panel Members:

For the Town

Joseph L. Randazzo, Esq.  
424 Main Street  
Buffalo, New York 14202

Public Member and Chairman

Anderson Wise, Esq.  
216 Washington Street  
Watertown, New York 13601

For the Police Club

Al Sgaglione, President  
Police Conference of New York  
112 State Street  
Albany, New York 12207

## BACKGROUND

The Town of Tonawanda Police Club petitioned for compulsory interest arbitration after failing to agree with the Town of Tonawanda on the report and recommendations of fact-finder Eric Lawson dated February 25, 1977. On April 4, 1977 PERB designated the undersigned as members of the Public Arbitration Panel with Anderson Wise as Chairman.

A lengthy hearing of the issues was held May 5, 1977 at the Town's offices in Tonawanda, New York. Both parties waived stenographic record. In addition to the oral testimony presented, both parties submitted extensive briefs setting forth their respective positions. At the conclusion of the hearing, the Panel convened in executive session. From time to time thereafter the Panel members have conferred and hereby respectfully submit this award.

The Panel must observe that it does not appear that the parties have devoted the time they might have to "hard bargaining" at the table.

## THE ISSUES

The Club petitioned for arbitration on sixteen issues, many of which included "sub-issues" [see Petition], and the parties agreed at the outset of the hearing that this Panel should also rule on the appropriate salary for the title "Records and Communications Office."

The Club withdrew its request for a determination of the following items contained in the Petition and indicated it would accept the fact-finder's recommendations on these items, as did the Town:

- 2a Longevity;
- 2c Call in Pay;
- 3b Compensatory Time for Processing Grievances;
- 7 Holidays;
- 8a Dental Insurance;
- 8b Major Medical;
- 8c Provision for Retirees;
- 12 Uniform Cleaning Allowance; and
- 14 Vacation.

Additionally, the Club indicated its willingness to be bound by the fact-finder's recommendations on the following issues, which the Town still considers "open":

- 2b Reduction in Steps in Salary Schedule;
- 3a Permission Prior to Union Investigation;
- 3c Number of Employees Allowed Time to Attend Meetings;
- 5 Court Time;
- 6 In Service Training;
- 9 Out of Rank Pay;
- 10 Personal Leave;
- 11 Occupational Vacancies; and
- 13 Posting of Job Vacancies.

In short, the Club has withdrawn its proposals or agreed to accept the fact-finder's position on all issues except [see Club brief, p. 12]:

- 1 Length of Contract;
- 2 Salary;
- 4 Seniority;
- 8b Major Medical Insurance;
- 15 Bill of Rights; and
- 16 Grievance Procedure.

The Town considers those issues and the others mentioned in the paragraph immediately above "open."

## ANALYSIS AND DETERMINATIONS

This Panel, in making its determinations, has considered the recommendations of the fact-finder, "comparability," the interests of the public, the ability to pay of the Town, hazards and qualifications of employment, local and regional economic conditions, the parties' past relationship and history, including the most recently expired agreement and certain litigation and grievance arbitration that has arisen as a result thereof, the totality of the "package" or contract, and other factors commonly considered in collective negotiations - public and private.

The Panel is also aware of the recent decision of the Court of Appeals in City of Buffalo v. Rinaldo, et al., as well as the fact that the Legislature has enacted and the Gouvernor has signed new legislation extending compulsory arbitration for police and firemen for two years and, to some extent, modifying the standards to be followed by a panel such as this one.

### (1) LENGTH OF CONTRACT

Both parties indicated at the hearing their willingness to have a two year agreement.

The Panel unanimously finds in view of the length of time elapsed since the expiration of the most recent agreement that it is in the best interest of the public and the parties that the contract be for a term of two years - effective (except as otherwise provided) January 1, 1977, and the Panel so determines.

(2b) REDUCTION IN STEPS

The fact-finder recommended no change with respect to longevity or the number of steps from the most recently expired agreement. The Club accepts that recommendation. The Town originally proposed to reduce the number of steps or increments; however, it indicated in its "last best offer"\* proposal submitted to fact-finder Lawson that it would drop its proposal [see Town brief V, January 7, 1977 summary]. Accordingly, the Panel determines there shall be no change in the number of steps.

(3a) PERMISSION PRIOR TO UNION INVESTIGATION

The fact-finder recommends "no change." The Club accepts that recommendation. The Town proposes that the Club representatives obtain advance permission from the department head prior to investigation of grievances, etc. The most recent contract provides for "reasonable advance notice," which would appear to give the Town sufficient flexibility. The Panel determines there shall be no change.

(3c) NUMBER OF EMPLOYEES ALLOWED  
TIME TO ATTEND PROFESSIONAL MEETINGS

The most recent contract [Section 3.02] provides that two police officers designated by the Club may attend authorized police conference meetings. The Town proposed to reduce the number to one police officer; the Club proposed to increase to three. The fact-finder recommends three. The Panel is not

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\*The Panel recognizes that the Town's position may have been contingent on a resolution of all open items.

persuaded there is sufficient reason to change the present contract provisions and determines that there will be none.

(5) COURT TIME

The last contract provides [Section 7.11] for straight time pay with a minimum of four hours pay when an officer is required to make a Court or related appearance on other than regularly scheduled duty time. The fact-finder recommended "the present provisions for court time shall be paid a rate of time and one-half the normal straight time rate." That recommendation has immediately given rise to a question of interpretation - does it mean a minimum of four hours at time and one-half? The Club says yes. That would assume a minimum of six hours pay, regardless of time actually spent. Admittedly, some contracts may provide for time and one-half with a four hour minimum; however, the Town would appear to have little control of court appearances. Under the circumstances, the Panel determines the Town shall pay for off duty court time at the rate of time and one-half based on time actually spent, provided that no officer shall receive less than four hours pay at his normal straight time rate.

(6) IN SERVICE TRAINING

The last agreement provided for payment for in service training at time and one-half. The fact-finder recommended without discussion that such time be paid at the rate of straight time. Scheduling of in service training is within the control of the Town. Moreover, no valid reason has been advanced to justify

taking away from employees a previously negotiated benefit. Accordingly, the Panel determines there shall be no change from the most recently expired contract.

(8b) MAJOR MEDICAL INSURANCE

The Town and the Club have informally indicated a willingness to accept the fact-finder's recommendation to implement major medical coverage January 1, 1978 - in the second year of the contract. The Panel so determines.

- (9) OUT OF RANK PAY  
(10) PERSONAL LEAVE  
(11) OCCUPATIONAL VACANCIES  
(13) POSTING OF JOB VACANCIES

The Club has withdrawn its proposal on each of these issues. The fact-finder recommended no change from the last contract with respect to each of them. The Town requests "minor" changes in items 9, 10, and 11 and accepts the fact-finder's recommendation with respect to 13. The Town's proposals would appear to deal more with procedure (which the Panel acknowledges can be important) than substance and appear (based on the Town's "last best offer" [Town brief V]) to have little, if any, economic significance.

As the Town proposes to change the last contract with respect to items 9, 10, and 11, it has the burden of demonstrating the need for same. The reasons for the requested changes are insufficient to meet that burden. Accordingly, the Panel determines that there shall be no change from the last contract with respect to items 9, 10, 11, and 13.

(4) SENIORITY  
(15) BILL OF RIGHTS  
(16) GRIEVANCE PROCEDURE

Each of these items involves a proposal for a language change by the Club. The Town, in its "last best offer," indicated its willingness to amend the existing seniority procedures to conform to the Civil Service Law with respect to probationary period and to amend the existing grievance procedure language to provide that the parties follow PERB procedures for the selection of an arbitrator in the event of failure to agree on a mutually acceptable arbitrator. The Town rejects the Club's proposal for a "Bill of Rights." The fact-finder recommended no change in any of these items.

The Panel finds that the parties have not sufficiently negotiated these three items apparently due to their inability to agree on salary and the major economic items. Accordingly, the Panel directs that the parties shall immediately return to the bargaining table and seriously negotiate with respect to these three issues. In the event the parties fail to agree by September 30, 1977, the contract shall incorporate the recommendations of the fact-finder with respect to Seniority and Grievance Procedure and shall incorporate the "Bill of Rights" clause contained in the existing agreement between the Town of Cheektowaga and its policemen. Those provisions, unless the parties mutually agree otherwise, shall be effective October 1, 1977 through the end of the contract.

SALARY FOR POLICE OFFICER -  
RECORDS AND COMMUNICATION

The parties have arbitrated (in May of 1975) and have been in New York State Supreme Court twice on the issue of salary for the title "Police Officer - Records and Communication."

The May 12, 1975 award of Arbitrator Robert France ruled that the Town had created a new position and directed the Town to negotiate with the Police Club on the basic annual salary.

Arbitrator France's opinion stated in part:

"In the Arbitrator's opinion, however, the duties performed by the patrolman assigned to the Communications room are different from those contemplated by the parties for patrolmen when they negotiated salaries for the current agreement. The duties correspond to many, but not all, of the duties specified for Desk Lieutenant."

The Supreme Court in September, 1975 and in January, 1977 dismissed the Club's petition alleging that the Town's assignment of patrolmen "to perform the functions and duties of a Desk Lieutenant" violated the New York Constitution, the Civil Service Law, and the parties' agreement.

The Town has attempted to negotiate with the Club the salary for this new position. The Club has declined. The Town has offered to pay this title a 5 percent premium over the position of patrolmen which represents a salary of \$14,974. The Club has not submitted any evidence that \$14,974 is not an appropriate salary, preferring instead to rely on its contention, in the face of Arbitrator France's opinion, that the duties are the same as those for Desk Lieutenant. Accordingly, we determine that \$14,974 is an appropriate salary for the position of Police Officer - Records and Communication.

## SALARY

The Police Club has "consolidated" its economic demands into a proposal for a 12 percent salary increase [see Club brief, p. 11] for the calendar year 1977. The Town has offered a 4 percent increase for 1977 and an additional 4 percent for 1978. It acknowledges it has settled with three other employee groups for a 5 percent increase in 1977. Fact-finder Lawson recommended a 5 percent increase in 1977 and from 6 to 8 percent increase in 1978, depending on the increase in the Buffalo CPI from December, 1976 through November, 1977.

The Police Club, in support of its proposal, cites: (1) a demonstration of the Town's ability to pay; (2) "traditional linkage with police officers in . . . Amherst"; (3) increases in the cost of living; and (4) differences in duties, qualifications, and hazards of employment between policemen and other employees. The Club properly examines the statutory criteria and relies heavily on comparability and the effects of inflation.

The Town also relies on "comparability" but draws comparisons with various other area municipalities including Amherst, as well as its settlements with other Town employees. It also alleges that from September 1, 1967, the effective date of the Taylor Law, its policemen have more than kept pace with inflation. The Town points out that for 1975-1976 its policemen received a 16.2 percent increase, whereas inflation for the same period rose at 11.1 percent for "all cities" and 9.1 percent for Buffalo. On the comparability issue, the Town attempts to highlight what it believes to be a significant difference between Tonawanda and Amherst. It argues that Amherst is increasing its tax base, which

at this time is primarily residential and has the potential for industrial and commercial growth, whereas Tonawanda, on the other hand, has a stable base composed of approximately 50 percent industrial-commercial property and 50 percent residential. Its representative testified, without contradiction, that Tonawanda has little or no property available for industrial expansion and is, in fact, losing some of its heavy industry, e.g. Western Electric.

The Police Club also cites as "comparable" the recent statewide CSEA settlement of 14 percent over two years. The Panel notes that that settlement came after two years of no increase and apparently includes an agreement to eliminate longevity increment for new employees.

The Club also cites certain area private sector settlements - Bethlehem Steel - hourly workers to receive an \$.80 per hour increase over three years; area auto workers up \$.66 to \$1.06 per hour; electricians up \$1.60 per hour over three years; rubber workers up \$1.50 to \$1.75 per hour over three years, etc. The Panel recognizes that the statute requires it to consider private as well as public settlements; however, there is a significant difference between the public and private sectors. The private sector usually passes on to the consumer its cost increases, e.g. recent increases in steel prices. The consumer then has the option to purchase or not purchase the product or service. The public employer also passes on to the consumer-taxpayer its increases; however, the taxpayer has, as a practical matter, no effective choice.

The Town relies heavily on the comparability of other area public "settlements" including: City of North Tonawanda - 5 percent; Town of West Seneca - fact-finder recommends \$750 across the board; state police - 5 percent in 1977 and 5 percent in 1978; and most heavily on its recently concluded settlement with its hourly employees and white collar workers of 5 percent.

(1) The Towns of Tonawanda and Amherst are "comparable," but not in all respects. Amherst has a substantially larger assessed value - 322.0 million vs. 225.5 million [the comparison is roughly the same if the value of properties located in the Villages of Williamsville and Kenmore are excluded]. Amherst also has more potential for growth and development which will increase its tax base. Moreover, Amherst, according to the uncontroverted testimony of Mr. Mahoney, has some 200-300 special improvement districts the residents of which pay additional taxes on a benefits provided basis. Tonawanda has no special improvement districts; rather, services are provided on a town wide basis from revenues generated by the Town tax levy. Accordingly, Amherst appears to be the wealthier town and thus better able to pay its employees.

The Panel notes at the outset that in comparing wages and benefits of policemen in Amherst vs. those in Tonawanda, the Club uses Amherst's 1977 wage settlement vs. Tonawanda's 1976 contract. The Town of Amherst settled with its policemen for a 6 percent increase in 1977 and 5 percent in 1978. Thus, the 5 percent salary increase for Tonawanda police in 1977 and the 6 to 8 percent increase for 1978 recommended by the fact-finder appears at face value comparable to the 6 percent and 5 percent for which Amherst policemen voluntarily settled.

It is with respect to "other benefits" that the Club attempts to prove its case that Amherst policemen are better paid. It cites briefing time (5.3 percent differential over Tonawanda), longevity and uniform maintenance (2.5 percent differential), college incentive (3.7 percent), and vacation cash equivalent (8.1 percent) as evidence of Amherst's policemen's better position vis-a-vis their Tonawanda brethren. We note that there is no "guarantee" that an Amherst policemen will not take his vacation and thus receive the cash equivalent (8.1 percent) or that he will graduate from a four year college and receive a 3.7 percent premium. In rebuttal, the Town cites Tonawanda's more liberal policies with respect to providing two consecutive days off in every calendar week, its shift differential premium, and better major medical coverage. Accordingly, it does not appear that there is the disparity between the two that the Club alleges.

The Panel also notes that federal revenue sharing funds will not, as claimed by the Club [see Club brief, p. 7], absorb approximately one-half the cost of police personal services. The Panel credits the testimony of the Town's accountant Mr. Mahoney who stated that no federal funds were available for police salaries.

(2) The Panel agrees with the Club's contention that the Town has not demonstrated any inability to pay and with the fact-finder's conclusion that "the Town of Tonawanda, in contrast to certain other western New York municipalities, appears to have its fiscal house in reasonably good shape." The statute requires this Panel to consider, among other things, "the interests and welfare of the public and the financial ability of the public employee to

pay." Because the Town has the ability to pay does not mean that this Panel should determine that it should pay "more" or pay what the Club proposes. We determine that payment of the Club's proposed 12 percent increase would not be in the public's interest as it would escalate the ever-increasing tax burden and would serve as a basis for other police unions in the area to seek even higher settlements.

(3) The Panel finds that the cost of living is increasing, regardless what index is used as a measuring device. The effects of inflation are not limited to municipal employees or policemen. Inflation impacts on the Town as well and on its taxpayers. It is not necessary for us to speculate on what the rate of increase is. Our determination takes into account the expected increases in the cost of living.

(4) The Panel recognizes the hazards of employment of a policeman in any locality, including the Town of Tonawanda. This Panel concludes that the hazards and conditions of employment of a policeman entitle him to compensation over and above that of an employee without these hazards. We are not aware of any peculiar requirements with respect to physical qualifications, educational qualifications, or mental qualifications of a Tonawanda policeman vis-a-vis other employees. Obviously, policemen require different skills and job training than office workers, sanitation men, highway workers, etc.; however, many other municipal workers require skills and training of a nature not expected or required of policemen. Firemen face similar hazards and require specialized training which may be akin to that required for policemen. The Town of Tonawanda has no paid firemen so there is

no basis for comparison. The Panel also notes that a percentage increase, as opposed to a flat dollar increase, builds on a pay scale which presumably is already greater than that of hourly workers, etc., and which therefore recognizes the hazards a policeman faces.

(5) The Police Club suggests that the fact-finder in making his recommendations correctly noted the basic points relied on by the Club - (1) comparability, particularly with Amherst; (2) ability to pay; and (3) inflation - but merely "paid lip service to these factors." The Town, on the other hand, would reluctantly agree with the fact-finder's recommendation for a 5 percent increase in 1977 but "feels that the second year increase recommendation is excessive and strongly urges its rejection . . . ." That second year recommendation was for an across the board increase of 6 percent to 8 percent depending on the increase in the Buffalo CPI for the 12 months from December, 1976 through November, 1977. We take that to mean that if the increase in the CPI is 6 percent or less, then policemen shall receive a 6 percent increase in 1978; if 8 percent or higher, policemen shall receive an 8 percent increase; if between 6 percent and 8 percent, then that is the increase the policemen shall receive.

The Panel determines that on balance the recommendation of the fact-finder accommodates, to the extent reasonably practicable, the needs of both parties, while at the same time not imposing an unreasonable burden on the taxpaying public of Tonawanda. His recommended "settlement" also is comparable (not the same) with that of Amherst and with those of the Town of Tonawanda with its other employees; it takes into account the

effects of inflation, particularly in the second year.

Accordingly, the Panel determines that Tonawanda policemen shall receive in 1977 a 5 percent increase and for 1978 an increase of not less than 6 percent and not more than 8 percent based on the increase in the Buffalo CPI for the period December, 1976 through November, 1977. If that index increase is 6 percent or less, policemen shall receive 6 percent; if 8 percent or more, 8 percent; if the increase is between 6 and 8 percent, the policemen shall receive a percentage increase equal to the increase in the Buffalo CPI.

Panel member Sgaglione dissents from the Panel determinations with respect to Salary for Police Officer - Records and Communication and Salary.

Respectfully submitted,

s/ Anderson Wise  
ANDERSON WISE  
CHAIRMAN  
PUBLIC ARBITRATION PANEL

s/ Joseph L. Randazzo  
JOSEPH L. RANDAZZO  
EMPLOYER MEMBER

[see attached dissent]  
AL SGAGLIONE  
EMPLOYEE MEMBER

Dated at Watertown, New York

July 30 , 1977

JUL 27 1977



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Case Nos.: CA-0126; M76-607 - Town of Tonawanda and Town of Tonawanda  
Police Club

Gentlemen:

On Friday, July 22, 1977, two copies of the Opinion and Determination re the above titled matter were received bearing the signatures of both Anderson Wise, Panel Chairman and Joseph L. Randazzo, Panel Employer Member.

This is to advise that as the Employee Panel Member, I dissent from the following issues:

(1) Court Time - Page 5. In my opinion there is no problem in understanding what the Fact Finder recommended on this issue when the Fact Finder recommended as follows: "the present provisions for court time shall be paid a rate of time and one-half the normal straight time rate." The Fact Finder recommended that the court time provision compensate Officers at the rate of time and one-half for the four hour minimum, which means each Officer required to make a court or related appearance on other than regularly scheduled duty time would be entitled to a payment of six hours and if such time exceeded the four hour minimum, such Officer would continue to be compensated at the rate of time and one-half. As the majority of the Panel has stated: "some contracts may provide for time and one-half with a four hour minimum." This leads to a firm understanding of what the Fact Finder stated in his recommendations that time and one-half was to be provided with a four hour minimum and not on time actually spent. I therefore dissent from the majority's opinion on this issue.

(2) Seniority - Page 7. While the Fact Finder recommended no change in this item and the majority of the Panel concurred with the Fact Finder, I take the position that seniority is extremely important to the morale, efficiency and well-being of a Police Agency, and to avoid partiality and politics from entering into a Police Agency, the union should be permitted to submit a grievance to the Town in the event seniority is not adhered to. I strongly support the union's position on this issue. I therefore dissent from the majority's opinion in regards to seniority.

(3) Salary for Police Officer - Records and Communication - Page 8. As Employee Panel Member, I dissent from the majority's determination on this issue. It was my understanding that Mr. Randazzo, the Employer Panel Member, was agreeable to a 7.5% premium over the position of Patrolman for this position. I indicated to Mr. Randazzo my agreement to the 7.5% premium pay in place of the current 5% premium. Therefore, I dissent from the Panel's majority determination on this issue.

(4) Salary - Pages 9 through 15. I dissent from the Panel's majority determination on this issue. I strongly supported a 7.5% salary increase for the calendar year 1977 for all members of the Police Club and supported the Fact Finder's recommendation for the calendar year 1978 which the Panel's majority adopted for the calendar year 1978. In reviewing the compulsory arbitration panel's Opinion and Determination as adopted by the majority, it is my opinion that the majority was not consistent in its findings. For example, on Page 12, the majority states: "We note that there is no 'guarantee' that an Amherst policeman will not take his vacation and thus receive the cash equivalent (8.1 percent) or that he will graduate from a four year college and receive a 3.7 percent premium." The Panel's majority cites these two areas that in their opinion there is no guarantee that an Amherst Policeman will benefit by such provisions, yet the Panel's majority fails to cite that briefing time (5.3% differential over Tonawanda) and longevity and uniform maintenance (2.5% differential) are guaranteed benefits and equal 7.8% differential between a Town of Amherst Police Officer and a Town of Tonawanda Police Officer. The 7.8% is a guaranteed differential and should be considered by the Panel's majority in determining the salary issue.

I must also take exception to Page 10 where the Panel's majority states: "The Panel recognizes that the statute requires it to consider private as well as public settlements; however, there is a significant difference between the public and private sectors. The private sector usually passes on to the consumer its cost increases, e.g. recent increases in steel prices." I wish to remind the Panel's majority that Mr. Eugene D. Mahoney, who serves as the financial consultant for the Town of Tonawanda, stated to the public hearing on May 5, 1977 that the Town of Tonawanda enjoyed a \$750,000.00 surplus at the close of the calendar year 1976. With such a surplus, plus the Town admitting to having the financial ability to pay, can lead to one conclusion and that is the taxpayer would not have been affected by a 7.5% salary increase for the calendar year 1977. In the steel industry, steel prices increased because of salary increases, but here the arbitration panel could have granted a 7.5% salary increase for the calendar year 1977 without having to pass such increase on to the taxpayer. This is where the inconsistency is quite apparent.

In closing, I again state that my name appears as a dissenter on the following items: Court Time; Seniority; Salary for Police Officer - Records and Communication; Salary, for reasons as outlined above and further request that this letter in its entirety be attached to the Compulsory Arbitration Panel's Opinion and Determination for release to the Town of Tonawanda; the Town of Tonawanda Police Club; Anderson Wise, Public Member and Chairman; Joseph L. Randazzo, Employer Panel Member; PERB and the public.

Thank you.

Respectfully submitted,

A handwritten signature in cursive script that reads "Al Sgaglione".

Al Sgaglione, President  
Police Conference of New York, Inc.

AJS:cl