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 In the Matter of Compulsory Arbitration \*  
 \*  
 between \*  
 \*  
 CITY OF NORTH TONAWANDA \*  
 \*  
 and \*  
 \*  
 NORTH TONAWANDA POLICE BENEVOLENT ASSOC. \*  
 \*  
 (PERB Case No. CA-0132; M76-756) \*  
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OPINION  
 AND  
 AWARD

U.S. PUBLIC EMPLOYMENT  
 RELATIONS BOARD  
**RECEIVED**  
 JUN 27 1977  
**CONCILIATION**

APPEARANCES:

For the City:

Richard H. Wyssling  
 James E. Rogers

Value Management Consultants  
 City Attorney

For the Association:

Joseph M. Neri  
 R. Thomas Burgasser, Esq  
 Robert Klingsmith  
 John Dierdorf  
 Dennis F. Jurasz  
 Joseph A. Scrivo

Negotiating Committee  
 Attorney  
 Attorney  
 President  
 Negotiating Committee  
 Negotiating Committee

A hearing was held before a Public Arbitration Panel consisting of Mr. Robert E. Stevens, Public Panel Member and Chairman, Mr. Eugene S. Olszowka, Employer Panel Member, and Mr. Robert Rossi, Employee Organization Panel Member, on May 31, 1977 at 10:00am at the Packet Inn, North Tonawanda, New York. The Public Arbitration Panel had been duly appointed by the Public Employment Relations Board pursuant to Section 209.4 of the Civil Service Law for the purpose of making a just and reasonable determination of the unresolved issues in the collective bargaining contract negotiation impasse in accord with the standards established by the statute.

All members of the Public Arbitration Panel took the Oath of Arbitrator that they would faithfully and fairly hear and decide the matters in dispute prior to the hearing.

The parties were provided full opportunity to be heard, to offer evidence and argument, and to call witnesses and engage in their examination and cross-examination. The parties did not call witnesses. Their proofs were received as:

NTPBA Fact-Finder Brief, PERB Case No. 76-756

City Brief dated May 31, 1977

Joint Exhibit 1 - Fact-Finder's Findings and Recommendations,  
PERB Case No. 76-756, dated March 1, 1977

Joint Exhibit 2 - Petition for Compulsory Arbitration

Joint Exhibit 3 - Response

Joint Exhibit 4 - Agreement, effective 4/1/73 through 3/31/75 with  
addendum, effective 4/1/75 through 3/31/77

PBA Exhibit 1 - Rebuttal for Fact-Finder Brief, PERB Case No. M76-756

PBA Exhibit 2 - Building Permits issued January through April 1977

PBA Exhibit 3 - Seniority Listing of Police Department

A tape recording of the hearing was made. All proofs and arguments were received by 2:00pm on May 31, 1977 and the hearing and record were declared closed. The Public Arbitration Panel went into executive session for two hours immediately after the hearing. A second executive session was held from 3:00 pm until 7:00 pm on Tuesday, June 14, 1977 at City Hall, North Tonawanda, New York.

#### THE ISSUES

The parties stipulated the issues to be determined by the arbitration essentially as follows:

1. What shall the change in salary for the period April 1, 1977 to December 31, 1977 be and what shall it be for the period January 1, 1978 to December 31, 1978?
2. What shall the change in longevity be, if any?
3. What shall the uniform allowance be for detectives and juvenile aide officers, if any?

The parties stipulated that they had reached agreement on all other contract terms and conditions, including contract duration, establishment of a sick-leave bank, establishment of a dental insurance program and a change in major medical expense insurance.

#### POSITION OF THE ASSOCIATION

The Association's position is that it should be granted a ten (10) per cent salary increase effective April 1, 1977 and an increase equal to the change in the Consumer's Price Index (CPI) plus one (1) per cent effective January 1, 1978 these increases to be made to the present increments.

The Association believes that the increases in longevity it proposed in negotiation should be granted. Under that proposal longevity would change from an annual payment of \$150. after 10 years, \$200. after 15 years, and \$250. after 20 years to an annual payment of \$150 after 5 years, \$300. after 10 years, \$400. after 15 years and \$500. after 20 years.

The Association's position on clothing allowance is that \$100. should be paid annually to detectives and juvenile aide personnel who are required to wear civilian clothing for work rather than a uniform.

#### POSITION OF THE CITY

The City's position is that the change in salary should be three (3) per cent effective April 1, 1977 and three (3) per cent, effective January 1, 1977.

The City believes that no change should be made in longevity pay and that a clothing allowance should not be granted.

#### CONTENTIONS OF THE PARTIES

The Association contends that its demands are more than justified by comparison with police departments surrounding the City of North Tonawanda. It

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contends that the City is experiencing moderate growth in its tax base in the face of the loss of industry in the area and that the City has the financial ability to pay. It also believes its demands are justified by the high cost-of-living in the area and by comparison with the average earnings of production workers in the Buffalo Standard Metropolitan Statistical Area as published by the NYS Department of Labor.

An increase in longevity is cited as being necessary because of the limited promotional opportunity in a police force of 50 men and the need to provide additional incentives. The clothing allowance is justified on the basis that it was a benefit once enjoyed and that clothing life is reduced when it must be worn for work.

The City contends that its police department is in an enviable position in comparison with other appropriate municipalities. It does not believe comparisons with towns are appropriate. The police fringe benefit package is substantial and part of the fringe benefits were trade-offs for salary increases. The City believes the police department has kept well ahead of the increase in the CPI over the long term. It also contends that the City has limited ability to pay and that the elderly and unemployed would be severely affected by any increase in taxes. Unemployment in the area is twelve (12) percent and based upon the City's ability to recruit applicants for police openings, the compensation of police officers is more than adequate. The City, therefore, believes its salary offer is reasonable and should be adopted.

#### O P I N I O N

It is unfortunate that the parties were unable to reach a voluntary settlement of the issues. The Fact-Finder's Findings and Recommendations were well-founded and should have served as a basis for settlement. It is not entirely

clear why they were not adopted except that the prospect of compulsory arbitration appeared to have precluded the parties from changing their original bargaining stance on the key unresolved issues. This observation is reinforced by the fact that the major medical and dental plan provisions agreed to by the parties have only a minor economic impact on the City - \$1.75 per officer per month, \$21.00 per year.

The issues presented to this arbitration panel are complex and their resolution will have a significant impact on all parties. Unfortunately, as Fact-Finder Gutteridge noted at page 12 of his report, "the appropriate level of compensation cannot be developed with scientific precision by means of some grandiose mathematical formula." This is not to say, however, that comparisons should not be made and the data carefully analyzed so that the result reached is not an arbitrary or intuitive one, but one based on reasoning which may be modified and improved upon in future years. It is with this view that I set forth the bases of the award below.

#### Cost of Living:

If public employees are properly paid for the work they perform based upon comparisons with others performing comparable work under comparable conditions in the same labor market area, they should be protected against projected changes in the cost-of-living. If they are underpaid based upon comparisons, their compensation should be increased or adjusted by a larger amount than the cost of living increase so that they will be paid the average or "going rate" for their jobs. On the other hand, if comparisons show they are being compensated at more than the median or average rate, their compensation may not require adjustment even though there is an increase in the cost of living.

It might be noted that as productivity increases, our standard of living increases. Our dollars are able to purchase more. It is recognized that wage and salary increases based on productivity are non-inflationary, that is, they do not cause upward changes in the cost-of-living as measured by the CPI.

Productivity has been estimated at 2-4 percent annually in the United States. If we assume it has increased at the rate of 3 percent annually, an employee's standard of living should be 30 percent higher in 1977 than it was in 1967.

Examination of Exhibit E in the City's brief shows that the CPI increased 71.1% between August 1967 and August 1976, while North Tonawanda Police salaries increased 92% during the same period. The conclusion to be drawn is that based upon the City's figures police salary increases exceeded CPI increases by 18.9%. If the increase in productivity is considered, however, North Tonawanda police improved their standard of living somewhat less than other employees in our economy.

The CPI for 1977 (1967 = 100) shows the following changes (LRX, 174g)

	<u>Jan.</u>	<u>Feb.</u>	<u>Mar.</u>	<u>Apr.</u>
All Cities	175.3	177.1	178.2	179.6
% Change Past Year	5.2	6.0	6.4	6.8

If costs continue to increase at the same rate during the remaining two-thirds of the year, the CPI will be 7.4 percent higher at year end

$$\left( \frac{179.6 - 175.3}{175.3} \times 3 = 7.4 \text{ percent} \right)$$

It appears certain that the CPI will increase at least 6 percent and very likely will go higher than 7.4 percent projected based upon the first four months of this year.

### Production Worker Wages

The high average production worker wage in the Buffalo area was cited as one factor justifying the Association's salary demand. Weekly earnings are approximately \$280.; on an annual basis, \$14,560. The compensation paid in this alternative source of employment must be considered if high calibre personnel are to be attracted and retained as police officers especially when one considers that police protection is required on an around-the-clock basis. Week-ends and holidays are normal work days for police officers.

It was also noted by the Public Arbitration Panel that average first-year pay increases negotiated under major collective bargaining agreements (those covering 1000 or more workers) during the first quarter of 1977 came to 7.6 percent according to the Bureau of Labor Statistics (95LRR Summary of Developments, May 8, 1977). Interestingly, agreements containing escalator provisions tended to provide smaller guaranteed wage increases than those without cost-of-living provisions - 7.1 percent v. 8 percent. (Supra).

While only 26 percent of the labor force in the private sector is organized for collective bargaining, contract negotiations do effect the compensation paid by unorganized employers. The high average wage paid production workers may be expected to continue and even to increase although unemployment is about 12 percent in the Buffalo area and about 8 percent nationally.

### Comparable Police Departments

There is a difference between the parties as to which police departments North Tonawanda should compare to in setting the compensation of police officers. The Association believes that the proper comparisons should be with police departments that are contiguous to North Tonawanda. The City believes the proper

comparisons should be with cities in Western New York State. The Arbitration Panel concurs with the Fact Finder and the Association that the proper comparisons are with police departments contiguous to North Tonawanda. There is little merit in comparing with police departments outside the labor market area. The Cost-of-living differs from city to city, the unemployment rates differ and financial ability also differs. Importantly, police officers and potential police officers are not likely to relocate from one city to another because of more favorable compensation. However, police officers and applicants for police work may be expected to seek the most remunerative employment within the labor market where they are located. Therefore, the compensation paid by surrounding police departments must be considered regardless of whether that department is town, village or city.

The City of Buffalo presents a problem because of its size and the size of its police department. Its force of 1400 officers as reported in the Association Fact-Finders Brief, at page 6, is twice the size of all other police departments combined if North Tonawanda is excluded from the comparison. The City of Buffalo's population of 453,000 is 93,500 or 17 percent less than the combined populations again excluding North Tonawanda. Because of its size, the specialization of its police personnel and services and the different nature of police work in a large city, the City of Buffalo police department should not be included in salary comparisons with North Tonawanda except in the most general way. It is in the North Tonawanda labor market but the comparability of working conditions and requirements does not appear to be as great as that of police departments in smaller governmental units.

For general guidance, it should be noted that a top-rated patrolman under Buffalo's July 1, 1974 to June 30, 1975 contract had a base salary of \$13,000.

with longevity increments of \$100. after 5 years, \$200. after 10 years, \$300. after 15 years, \$400 after 20 years and \$600. after 25 years. The longevity increments are cumulative so that they add \$1600. per year to the salary of a patrolman with 25 years or more of service. Additionally, Buffalo pays its patrolman 15 minutes "line-up" time in the morning and 15 minutes at the end of the shift which adds \$1250. to his salary annually. With the Court of Appeals recent confirmation of a compulsory interest arbitration award, police officers will be given a cash payment of approximately ten (10) percent and the top patrolman rate will go to \$13,635 for the 1975-76 contract year. The City currently is in fact-finding as a result of an impasse in negotiations for 1976-77 and 1977-78.

The earnings for a Buffalo patrolman are summarized in Table 1 below for comparison purposes:

Year	CITY OF BUFFALO PATROLMAN EARNINGS*	
	1974-75	1975-76
1	\$ 9,980.	\$10,479.
2	11,490.	12,057.
3-5	13,000.	13,635.
6-10	13,100.	13,735.
11-15	13,300.	14,035.
16-20	13,600.	14,635.
21-25	14,000.	15,035.
26-30	14,600.	15,635.
	<u>\$403,470.</u>	<u>\$422,316.</u>
Line-Up Pay	37,500.	37,500.
Total	<u>\$440,970.</u>	<u>\$459,816.</u>

\*Data obtained by telephone from Labor Relations Department, City of Buffalo on June 20 and June 22, 1977. The compensation formula is complex and there may be some slight variation in actual line-up pay for 74-75 and the actual salary for year 1 and 2 in 1975-76.

Analysis of Comparative Salary Data

The 1976 salary data for the police departments surrounding North Tonawanda excluding Buffalo, has been summarized in two ways. (Association's Fact-Finder's Brief, pages 22-24). First, the data for patrolman was analyzed on a 30 year basis relating salary and longevity and calculating theoretical 30 year career

earnings. Second, the top patrolman salary and career earnings were weighted by population to provide a means for comparing North Tonawanda with salary figures adjusted for population differences. These comparisons are summarized in Tables II and III.

Table II shows that North Tonawanda ranks 6th out of the 9 police departments shown. Further analysis indicates that a salary adjustment of \$37. annually is needed to bring its top patrolman salary up to the average of the other eight departments and that total adjustments of \$5113, are needed to bring career earnings up to the average.

When the data is analyzed in Table III, North Tonawanda is seen as being less than 2% below the weighted average top patrolman salary and somewhat less than 3% below the weighted average 30 year career earnings. This latter disparity is due to the effect of less favorable longevity payments.

#### Fringe Benefits

There is no question but that fringe benefits are part of compensation and must be considered along with salary and longevity payments.

The City's brief, Exhibit B, purports to show the cost of fringe benefits paid a top patrolman in North Tonawanda. The Exhibit is misleading in that actual cost to the City is far less than the amount shown. The patrolman's salary already includes the cost to the City of sick days, personal days, vacation and holidays. It is true that these are cost items to the City in that the work force is larger by about 7 patrolmen than it would have to be if the benefits were not granted. Also it is true over-time and out-of-title pay averaging \$141 per patrolman is occasioned by time away from work as well as by other causes.

TABLE II

1976 PATROLMAN EARNINGS COMPARISON

Year	North Tonawanda	Kennmore	Anherst	Tonawanda (Town)	Depew	Cheektowaga	Tonawanda	Lockport	Niagara Falls*
1	\$11,053	\$10,893	\$10,222	\$10,979	\$13,926**	\$12,285	\$10,521	\$ 9,546	\$11,878
2	11,803	12,844	11,799	11,325	"	13,040	11,337	10,212	12,450 **
3	12,552	14,305**	12,977	12,218	"	13,414	12,153	10,878	"
4-5	13,304**	"	14,157**	13,205**	"	14,176**	12,969**	11,544**	"
6	13,304	14,505	14,407	13,405	14,051	14,176	13,069	"	12,593
7	"	"	"	"	"	14,276	"	"	"
8-10	"	14,555	14,507	13,505	"	"	"	"	"
11-12	13,454	14,605	14,607	13,605	14,151	"	13,269	11,594	12,749
13	"	"	"	"	"	14,326	"	"	"
14-15	"	"	"	"	"	"	"	"	"
16-18	13,504	14,705	14,707	13,705	14,251	"	"	11,694	12,931
19-20	"	"	"	"	"	14,426	"	"	"
21-25	13,554	14,805	14,807	13,805	14,351	"	"	"	13,113
26-30	"	"	"	"	14,426	"	"	"	13,295
Total	399,866	433,942	430,287	402,857	425,780	426,891	390,674	344,824	384,580

\*Based on PERB, First 1977 Report of Salaries For Police, January 1977

\*\*Top Step, all other figures reflect longevity increases. It should be noted that longevity payments may be either cumulative or non-cumulative (as in the case of North Tonawanda). Where it was not clear in the data it was assumed the payments were non-cumulative.

TABLE III

COMPARISON OF TOP PATROLMAN SALARY  
AND CAREER EARNINGS WEIGHTED BY POPULATION

Police Department	Weight	Top Salary Career Earnings	Weighted Salary*	Weighted Career Earnings*
Kermore	.04	\$ 14,305 433,942	\$ 572.	\$17,358
Amherst	.22	14,157 430,287	3115.	94,663
Tonawanda (Town)	.201	13,205 402,857	2654.	80,974
Depew	.047	13,926 425,780	655.	20,012
Cheektowaga	.247	14,176 426,891	3501.	105,442
Tonawanda	.04	12,969 390,674	519.	15,627
Lockport	.048	11,544 344,824	554.	16,552
Niagara Falls	.156	12,450 384,580	1942.	59,994
Total	.999		\$13,512	\$410,622
North Tonawanda			\$13,304	\$399,866
Difference			\$ 208.	\$ 10,756
			- 1.56%	- 2.68%

\* Figures rounded to nearest dollar

If longevity payments which should be considered part of basic salary and the payments for time away from work are deleted, fringe benefit cost drops to \$4271, 32 percent of salary. The fringe benefits which remain are not convincing that the City of North Tonawanda pays more in benefits so as to justify lower salary and longevity payments.

#### Financial Ability of the City to Pay

The Fact-Finder in his report at page 13 concluded that there was no evidence to support the City's contention that it was fiscally unable to grant a wage increase to the Association or, for that matter, to any group of its employees. Since the same financial data and arguments were presented to the Public Arbitration Panel as were presented to the Fact-Finder, there is no basis for the Panel to reach a different conclusion.

The Panel is cognizant of the financial difficulties faced by New York State and its major cities. It is also cognizant of the relatively high unemployment rate in the Buffalo area and the difficulty many people have in coping with the high cost of living which includes increased property taxes. However, these factors urge caution and that increases in employee compensation be fully justified.

The Panel is also cognizant that compulsory interest arbitration should not be resorted to lightly by the parties. It should only be done after all possibilities of a voluntary settlement have been thoroughly exhausted and it becomes essential for the unresolved issues to be settled on a just and reasonable basis by a third party. It is with these considerations that the Panel has examined all matters in dispute and has concluded that there should be increases in salary effective April 1, 1977 and January 1, 1978. It has also concluded that in the second year the differentials for Detectives and Juvenile Aide

Officers should be increased to more properly reflect the differences in job value between the police ranks and the detective-juvenile aide officer ranks. The Panel believes these differentials should be constant dollar amounts, not subjected automatically to future percentage increases as in the past. The differentials are intended to compensate for the greater job responsibilities and requirements, including the necessity of civilian clothing. Since such clothing is repaired or replaced by the City if damaged in the course of duty, the Panel has concluded that a uniform allowance should not be granted. Finally the Panel has concluded that longevity payments should be increased effective January 1, 1978.

The members of the Panel do not claim to have reached a perfect solution, but they are confident it is one which reflects consideration of all of the pertinent factors. Needless to say, there were differences as to what weight should be given the factors and compromises were necessary. The result, however, achieves the purposes for which the Panel was established.

As the duly appointed Chairman and Public Member, for the Public Arbitration Panel, I hereby make the following

A W A R D

1. It is directed that the salaries of police officers be increased retroactive to April 1, 1977, six (6) percent with the differentials for detective-juvenile aide officers remaining unchanged, as follows:

	<u>Step</u>			
	1	2	3	4
Police Patrolman	11,716	12,511	13,305	14,102
Police Lieutenant				15,355
Police Captain				17,892
Detective or Juvenile Aide Officer Patrolman				Add \$561 to annual salary
Detective or Juvenile Aide Officer Lieutenant				Add \$640 to annual salary
Detective or Juvenile Aide Officer Captain				Add \$731 to annual salary



I concur/~~dissent~~ in the above award.

6/23/77  
Date

Eugene S. Olszowka  
Eugene S. Olszowka  
Employer Panel Member

STATE OF NEW YORK )  
COUNTY OF Wagaria SS:

On this 23 day of June 1977, before me personally came and appeared  
EUGENE S. OLSZOWKA 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.

Elizabeth ZuPo  
Notary Public  
ELIZABETH ZUPO  
NOTARY PUBLIC, STATE OF NEW YORK  
Qualified in Wagaria County Reg. # 4613289  
My Commission Expires March 30, 1979

I concur/~~dissent~~ in the above award.

6-23-77  
Date

Robert Rossi  
Robert Rossi  
Employee Organization Panel Member

STATE OF NEW YORK )  
COUNTY OF Wagaria SS:

On this 23 day of June 1977, before me personally came and appeared  
ROBERT ROSSI 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.

Elizabeth ZuPo  
Notary Public  
ELIZABETH ZUPO  
NOTARY PUBLIC, STATE OF NEW YORK  
Qualified in Wagaria County Reg. # 4613289  
My Commission Expires March 30, 1979