

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD
INTEREST ARBITRATION PANEL
CASE: IA 098-028; M 098-122

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In The Matter of Interest Arbitration

- between -

CITY OF TONAWANDA

- and -

CITY OF TONAWANDA POLICE OFFICERS ASSOCIATION

* * * *

OPINION

AND

A W A R D

REPRESENTATION

For the City

James N. Schmit, Esq., Spokesman
Joseph Hogenkamp, City Treasurer, Witness
Mark Winters, Police Chief

For the Police Association

Officer William Strassburg, Jr., Vice President, Spokesman
Anthony Hynes, Consultant, Witness
Lieut. Fred Foels, PBA President
Lieut. Richard Graff, Treasurer

For the Panel

Samuel Cugalj, Chairman and Public Panel Member
Donald Witkowski, Public Employer Panel Member
Norman J. Stocker, Employee Organization Panel Member

**NYS PUBLIC EMPLOYMENT RELATIONS BOARD
RECEIVED**

FEB 28 2000

CONCILIATION

BACKGROUND

The City of Tonawanda (hereafter "CITY"), located in northwestern Erie County, has an estimated population of 17,284 (1990 census), and covers an area of approximately 3.5 square miles. It has a police department, and the City of Tonawanda Police Officers Association (hereafter "POA") represents the entire department with the exception of the Police Chief. Thirty (30) bargaining unit members work as police officers, detectives, lieutenants, and captains.

Collective bargaining agreements have existed between the parties for many years. Their last Agreement expired on December 31, 1997. After several unsuccessful negotiating sessions, the POA petitioned the New York State Public Employment Relations Board (PERB) for mediation services on October 29, 1998. A mediator met with the parties, but was unable to resolve their differences. On April 7, 1999, PERB appointed this three (3) member Public Arbitration Panel to resolve the dispute.

The Panel met in Executive Session on June 1, 1999 to discuss the impasse. With approximately forty-three (43) issues unresolved, preliminary meetings were held with the parties on June 23 and July 6, 1999 to either resolve the impasse or narrow the number of issues for the Panel. Resolution was not reached, and it was agreed that the POA could present fifteen (15) issues and the CITY would present five (5) issues to the Panel. A Hearing was subsequently held in Tonawanda, New York on August 23, 1999 in this regard. At the Hearing, the Panel received extensive material including 1 Joint Exhibit, 15 CITY and 10 POA Exhibits. The parties were given full opportunity to present arguments in support of their positions on the open issues, introduce evidence and witnesses, and to engage in their examination and cross-examination.

Panel members independently and extensively reviewed the Exhibits, notes, and Hearing Briefs, and then met in Executive Session on October 21, December 1, 7, 1999, January 26 and February 1, 2000 to deliberate the issues. The Panel fully discussed the merits of the parties' arguments, the evidence submitted, and ultimately structured this AWARD to satisfy Section 209.4 (v) of the Taylor Law 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 shall specify the basis for its findings, taking into consideration, in addition to any other relevant factors, the following:

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 services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities;

b. the interest and welfare of the public and the financial ability of the public employer to pay;

c. comparison of peculiarities in regard to other trades or professions, including specifically, (1) hazards of employment; (2) physical qualifications; (3) educational qualifications; (4) mental qualifications; (5) job training and skills.

d. the terms of collective agreements negotiated between the parties in the past providing for compensation and fringe benefits, including, but not limited to, the provisions of salary, insurance and retirement benefits, medical and hospitalization benefits, paid time off, and job security. "

Issue #1 - WAGES (Sections 3.1)

BACKGROUND ON WAGES

The POA seeks a ten percent (10%) wage improvement in each of two (2) years. They believe they are at the low end of their comparison group of police departments elsewhere.

The CITY offers a two and one-half percent (2½%) wage improvement for one (1) year on the basis of similar size city and police department comparisons. Their proposal also matches the wage change negotiated earlier with the other three (3) employee groups in the CITY.

COMPARABLE JURISDICTIONS

The parties could not agree on the make-up of the comparison group. The POA's comparison group is a mix of neighboring local jurisdictions such as the Towns of Tonawanda and Orchard Park, the cities of North Tonawanda and Lockport and the village of Kenmore. They also presented wage and benefits data from a broad range of communities in Western New York. The POA argues that police work is similar regardless of the type of community, and a broader view best represents a more equitable way of evaluating wage competitiveness.

The CITY argues that comparisons are best matched with cities of similar type, population and size of police departments, and geographic size. They offer the cities of Batavia, Cortland, Geneva, Lackawanna and Olean as comparisons. The CITY also refers to an Interest Arbitration Award in the Matter of Utica and Utica Prof. Firefighters Ass'n, PERB #IA97-045, M97-065 (4-23-99) wherein that Arbitration Panel opines "the(y) rejected the cites suggested by the union because none of these cities is comparable to the City of Utica in terms of population, size of

department, per capita income or overall economic situation.” The CITY argued for the Panel to respect the settlement reached with their other 3 employee groups.

Neither party presented prior Interest Arbitration awards that could show a previous history of comparisons for this Panel to consider. Both POA and CITY positions have value and because of unusual circumstances described later, a Panel majority drew support and data from both. There is some merit in a cities' comparison because there is a commonality in how they are governed, administered and financed. Many times, cities can share economic and social problems, not found in towns and villages. On the other hand, the latter 2 have issues that cities may not have. However, in the instant case, Cortland, Geneva and Olean are a good distance removed from Tonawanda and it is likely that a comparison may lose some impact for that reason. A Panel majority also considered general wage settlements in the area for a broader local view, where POA members do share a commonality of interests, needs and well being with their neighbors and counterparts.

ABILITY TO PAY

By and large, the CITY appears to run an efficient financial operation and can support the Panel's Award. Outside auditors gave the CITY favorable reviews for their 1997 and 1998 fiscal years operations. Their end-of-the-year Fund Balance has been positive for a number of years: for 1993, \$1,757,923; 1994 \$1,961,846; 1995 \$2,237,647; 1996 \$3,288,077; 1997 \$4,117,582; and 1998, \$3,500,000. The Unreserved Fund Balance on 12-31-97 was \$3,691,556 of which \$1,722,056 was unreserved and undesignated. On 12-31-98, the projected Unreserved and Undesignated Fund Balance, carrying over into fiscal 1999, was \$1,700,000. To be sure, a

portion of these unreserved funds may be needed to carry the CITY for the first few months of the year, before taxes are received beginning April 1.

While the CITY's general fund has increased, indebtedness also increased from \$5,121,936 on 12/31/94 to \$11,419,864 on 12/31/98. However, total general fund equity, as a percentage of total outstanding CITY indebtedness was projected at 35.11% for fiscal 1998, and was the lowest such ratio since 1987. This indebtedness does not require an immediate payoff, and could be paid off over an extended number of years.

The Panel notes that as of May 15, 1999, Moody's Investor's Service gave the CITY's bonds a "Baa1" rating, indicating medium investment grade. Taxpayers have experienced manageable increases in the tax rate/\$1,000 from \$10.57 in 1991 to \$15.89 in 1999. No tax increases were approved for 1997 or 1999. The CITY is assessing at 85% of full valuation and this has been decreasing annually from 1996-99.

The CITY's population has experienced a steady drop of 20% from 1960 to the 1990 census vs. a county population decrease of 9% over the same time period. From 1980 through 1990, the CITY's per capita income increased to \$12,651, while the County per capita income increased to \$13,560 over the same period.

DISCUSSION AND AWARD

No productivity issues were brought before the Panel, so the public is being well served by its police department. It is in the public's interest to have a well motivated and productive police force, and maintaining wage competitiveness goes a long way in this respect. The CITY's comparison reflected a median 1998 wage increase of 3.4%, although the one city not settled (in addition to Tonawanda) has, in the past, been very competitive with wage

settlements and could reasonably be expected to exceed the 3.4% median increase. POA Exhibit 1 F shows that of 18 police wage settlements in 1998 in Western New York, the median wage increase was 3.6%, with 14 settlements between 3.5%-5%. In fact, the lowest wage increase was 3.25%.

Against this background, the Panel understood the CITY settled 1998 contracts with their other 3 employee groups with a 2.5% wage increase. The CITY later offered these groups any additional wage/benefit agreed to and exceeding 2.5% for 1998 with any other group (i.e., the POA). During Executive Sessions, the Employer Panel Member argued strenuously for a 1 year Award of 2.5%. After much discussion, a Panel majority reluctantly acceded to the arguments put forth by the Employer Member and limited the 1998 wage change to 2.5%. The fourth year POA wage is used as a benchmark since all but 5 POA members are at that step. In 1997, at the end of the expired agreement, the POA maximum was \$39,096. This Panel's Award of 2.5% for 1998 raises the POA maximum to \$40,073. Clearly this does not maintain pace with either the CITY or the POA comparisons.

For 1999, a Panel majority was guided by a combination of the shortfall in the Panel's 1998 Award, the CITY's comparisons, and general Western New York police settlements. The CITY's comparison showed only 1 settlement of 3.9%, while the POA exhibit reflected 13 police settlements with the median increase of 3.65%. Eleven settlements were between 3.5%-4%. For 1999, the Panel's Award of a 5.5% wage increase raises the POA maximum to \$42,277.

Based on total straight time police wages of \$1,185,960 in 1997, the additional cost of the Panel's 1998 wage Award is estimated at \$36,416, which CITY had previously funded since it made the wage offer. Total straight time police wages for 1998 was given as \$1,227,444 and the cost of the Panel's 1999 wage Award of 5.5% is estimated at \$67,509.

AWARD

Effective 1-1-98, the Panel Awards a wage increase of 2.5%, based on the 12-31-97 wage schedule.

Effective 1-1-99, the Panel Awards a wage increase of 5.5%, based wage schedule (including the wage increase awarded for 12-31-98).

These wage increases are to be paid as soon as possible but not later than 30 days from the date of this Award.

Issue #2 - TERM OF AWARD (Section 31.1)

The POA prefers a 2 year Award, while the CITY argues for a 1 year Award.

The Chair observes these negotiations have been contentious and to allow the parties some breathing room, a 2 year Award was deemed in the best interests of the parties.

AWARD

The Panel Awards a 2 year Agreement beginning January 1, 1998 and expiring December 31, 1999.

Issue #3 - SHOOTING INCENTIVE (New Section)

The POA currently does not enjoy a shooting incentive and they seek a \$500 stipend after an officer qualifies.

The CITY denies any such incentive, pointing out that only Cortland, in the CITY's comparison, offers a \$175 stipend.

The Panel believes a modest incentive of \$175 annually would offer further encouragement for officers to maintain shooting competence. This benefit is unique to the police

department and clearly this would have a public benefit. The cost of this program is estimated at \$5,250 annually.

AWARD

Effective 1-1-98, the Panel Awards a \$175 annual shooting incentive stipend for POA members who qualify on the shooting range.

Issue #4 - BRIEFING PAY (Section 4.12)

POA members who are scheduled to report 15 minutes before their shift start, for briefing or training purposes, currently receive an additional \$800 annually for briefing pay. They seek an additional \$200 annually for a total of \$1,000. Their Exhibit shows that the cities of North Tonawanda (\$1,735) and Lockport (\$1,801) also provide this benefit.

The CITY denies their demand arguing that only 2 of the 5 cities' comparison have a briefing incentive.

The Panel considered the fact that Cortland has briefing pay, estimated at \$1,072, and Geneva's benefit is valued at approximately \$1,089 annually for each officer. The Panel offers a modest increase of \$100 annually (to \$900), and the annual cost of this Award is estimated at (\$3,000) annually.

AWARD

Effective January 1, 1998, the Panel Awards an increase of \$100 annually for briefing pay (to \$900).

Issue #5 - DENTAL INSURANCE (Section 19.8)

The expired Agreement calls for the POA to receive \$4,500 (or \$150 per unit member) for dental coverage. The POA seeks an improvement to \$15,000 annually. They point out that they receive the least of all CITY employees, e.g., the Fire Department contributes \$15,000 annually (or \$576 per unit member), the DPW unit receives \$22,500 (or \$375 per unit member), and the CSEA unit receives \$4,125 annually (or \$375 per unit member).

The CITY does not believe there is justification for any change.

The CITY's comparison shows only 1 of 5 cities provide dental coverage for its police unit. However, the Panel was motivated by the inequity of the POA and the other CITY employee groups, and attempts to moderate this inequity. Even with this Award, the POA is still below the other employee groups. This Award has an estimated annual cost of \$4,500.

AWARD

Effective 1-1-98, the Panel Awards the POA unit additional dental benefits of \$4,500 annually (to \$9,000 annually).

Issue #6 - INDEMNIFICATION (Section 26.2)

The CITY argues that police officers currently have protection from lawsuits through CITY ordinances. The POA seeks to codify this coverage in their Agreement to prevent inadvertent change without its knowledge. A Panel majority recommends that Section 50-j, excluding the punitive language of the General Municipal Law, as proposed by the CITY, be added to the Agreement effective January 1, 1998.

AWARD

Effective 1-1-98, the Panel Awards Section 50-j of the General Municipal Law (excluding the punitive provisions of paragraph 6) be incorporated into their Agreement . See attachment.

Issue #7 - GRIEVANCE PROCESSING (New Section)

Currently, the Agreement does not provide a specific number of days before which a grievance must be filed. The CITY seeks a "reasonable period of time" for grievance filing.

The Panel Awards CITY proposal 8 but modified with regard to the number of days.

AWARD

Effective 12-31-99, the Panel Awards a 15 calendar day deadline on grievance filing once the alleged violation becomes known.

Issue #8 - SELECTION OF ARBITRATORS (Section 26.3 a)

The expired Agreement provides for the party requesting arbitration to strike the first name off the list provided by PERB. The POA proposes that a flip of the coin should determine who strikes the first name instead.

The Panel Awards POA proposal 39.

AWARD

Effective 12-31-99, the Panel Awards the POA demand that a flip of the coin shall determine which party shall be the first to strike names from an arbitration list.

Issue #9 - LONGEVITY (Section 6.1)

The current Agreement provides for longevity pay and the POA seeks an increase in this schedule of \$100 per step in the 1st year and an additional \$200 per step in the 2nd year.

The CITY believes the current schedule is competitive and offers no change.

The Panel believes its Award of a \$100 step increase will further enhance and reward the uniqueness, continuing experience and skill levels of police work. The annual cost of this Award is estimated at \$3,000.

AWARD

Effective 1-1-98, the Panel Awards a \$100 increase in each step of the existing longevity schedule.

Issue #10 - CLOTHING ALLOWANCE (Section 14.1)

The expired Agreement calls for a \$400 annual clothing allowance for the replacement and maintenance of necessary clothing and uniforms. The POA seeks an increase to \$600, citing increasing costs to POA members for purchasing and cleaning. POA comparisons with other police groups show that many communities purchase police uniforms, so their police officers can use their clothing allowance for cleaning alone.

The CITY alleges the current clothing allowance is both sufficient and competitive.

The Panel observes from CITY's Exhibit B, the median clothing allowance for the cities' comparison ranges from \$500 to \$625 annually, with the median being \$600 annually. The Panel's Award to the \$600 median is in response to the increase in maintenance costs. No

information was provided on uniform purchase increases. The annual cost of this Award is estimated at \$6,000.

AWARD

Effective 1-1-98, the Panel Awards a \$200 annual increase in clothing allowance (to \$600 total).

Issue #11 - MAXIMUM SICK LEAVE CREDIT (Section 9.3)

The expired Agreement allows POA members to accumulate sick leave to a maximum of 210 days. They seek an unlimited accumulation of days, arguing that in neighboring communities, this allowance is not competitive.

The CITY argues that the present allowance is sufficient, competitive, and costly. They prefer no change in this benefit.

The Panel observes that in CITY Exhibit B, the comparison shows a median of 220 days of accumulated sick leave are given by the 4 cities who have this benefit. One city does not provide this benefit. The CITY automatically assumes any additional days awarded will be accumulated, but the Panel does not share in that certainty. The Panel's Award maintains the POA's general competitiveness. The cost of the Award is difficult to ascertain, because while these days have present value, there is no certainty the additional days will be accumulated and paid out at some future date.

AWARD

Effective 1-1-99, the Panel Awards an increase of an additional 30 days of accumulated sick leave (to 240 days) in Section 9.3 of the Agreement.

Issue #12 - SICK LEAVE BUY-BACK (Section 9.4)

The expired Agreement allows POA members to buy back a maximum of 100 unused sick leave days upon retirement or death. The POA seeks the removal of the cap, arguing that police officers work many years to accumulate sick leave and they should be entitled to the benefit they earned.

The CITY argues the current cap of 100 days is competitive, sufficient and already costly. They prefer no change in this benefit.

A Panel majority observes that from CITY Exhibit B, the comparison shows a median of 120 days are allowed for buy back, with 1 other city having inconclusive information for our evaluation. The Panel's Award of additional days is again an effort to keep POA members competitive. Cost estimates are of this Award are difficult to determine, because while they have present value, their payout is not definite, and is spread out based on varying retirement dates and therefore more easily anticipated and budgeted.

AWARD

Effective 1-1-98, the Panel Awards an additional 40 days of accumulated sick leave (total of 140 days) available for buy back at retirement or death.

REMAINING DEMANDS AND ISSUES

ALL OTHER DEMANDS AND ISSUES BROUGHT FORTH EARLIER IN THESE NEGOTIATIONS OR IN THIS ARBITRATION PROCEEDING, ARE CONSIDERED TO BE EITHER WITHDRAWN OR DENIED BY THE PANEL.

The Employer Panel Member has indicated he will file a dissenting opinion which is attached.

ATTACHMENT #1
Issue #6 –INDEMNIFICATION (Section 26.2)

The Panel Awards the following language for this Issue:

“a. Notwithstanding the provisions of any general, special or local law, charter or code to the contrary, every city, county, town, village authority or agency shall be liable for, and shall assume the liability to the extent that it shall save harmless, any duly appointed police officer of such municipality, authority or agency for any negligent act or tort, provided such police officer, at the time of the negligent act or tort complained of, was acting in the performance of his duties and within the scope of his employment.

b. For purposes of this section a police officer of any such municipal corporation, authority or agency, although excused from official duty at the time, shall be deemed to be acting in the discharge of duty when engaged in the immediate and actual performance of public duty imposed by law and such public duty performed was for the benefit of the citizens of the community wherein such public duty was performed and the municipal corporation, authority or agency derived no special benefit in its corporate capacity.

c. No action or special proceeding instituted hereunder shall be prosecuted or maintained against the municipality, authority or agency concerned or such police officer unless notice of claim shall have been made and served upon such municipality, authority or agency in compliance with section fifty-e of this chapter. Every such action shall be commenced pursuant to the provisions of section fifty-i of this chapter.

STATE OF NEW YORK }
COUNTY OF ERIE } ss:

On this 26th day of February 2000, before me personally came and appeared Samuel Cugalj, 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.

Samuel Cugalj
SAMUEL CUGALJ
Chairman and Public Panel Member
Concurs

Jodi L. Cihak

JODI L. CIHAK
Notary Public, State of New York
Qualified in Erie County
My Commission Expires 9-9-00

STATE OF NEW YORK }
COUNTY OF ERIE } ss:

On this _____ day of February 2000, before me personally came and appeared Norman J. Stocker, 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.

Norman J. Stocker
NORMAN J. STOCKER
Employee Organization Panel Member
Concurs

Carol J. Czyz

CAROL J. CZYZ
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN ERIE COUNTY
MY COMMISSION EXPIRES 4/27/00

STATE OF NEW YORK }
COUNTY OF ERIE } ss:

On this 23 day of February 2000, before me personally came and appeared Donald Witkowski, 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.

Donald Witkowski
DONALD WITKOWSKI
Public Employer Panel Member
Dissents

Jeanette A. Harmon

JEANETTE A. HARMON
Notary Public, State of New York
No. 4990976
Qualified in Erie County
Commission Expires January 21, 2002