

SEP 7 1976

NEW YORK STATE  
PUBLIC EMPLOYMENT RELATIONS BOARD

**CONCILIATION**

In the Matter of the Compulsory  
Interest Arbitration

-between-

THE CITY OF BUFFALO

and

THE BUFFALO POLICE BENEVOLENT ASSOCIATION

x

x

Award of Public  
x Arbitration Panel

x Case No. CA 0092  
M75-687

x

x

x

Before: THOMAS N. RINALDO, ESQ. -Neutral Chairperson  
AL SGAGLIONE -Association Panel Member  
ROBERT E. CASEY, JR., ESQ. -Employer Panel Member

A hearing in the above matter was held in the City of Buffalo, on July 13th, 14th, and 26th before the undersigned members of the Public Arbitration Panel who were selected in accordance with the compulsory interest arbitration procedures of the New York State Public Employment Relations Board.

At the hearing, the parties were given full opportunity to present their evidence, testimony and argument; the record was closed on July 26th at the conclusion of the

hearing. The panel met in an executive session on Tuesday, August 10, 1976, to discuss and decide the issues presented at the hearing.

DECISION

The panel, in arriving at its determination, gave full and careful consideration to the recommendations of the Fact Finder; the comparison of wages, hours and working conditions of a City of Buffalo police officer with those in comparable areas; the interest and welfare of the public; the working conditions which are unique to policemen and the financial ability of the City of Buffalo to pay. We reached our conclusions after reading the voluminous reports, financial data and after reviewing the stenographic record made at the hearing.

The Police Benevolent Association fought vigorously during the three-day hearing attempting to persuade the members of the panel to reject the Fact Finder's recommendation of a 6% non-recurring bonus and to award their 10% salary request. No less than three separate financial consultant reports were

submitted in an attempt to convince the panel that the P.B.A.'s request was within the ability of the City of Buffalo to pay. The P.B.A. argued that their request could be funded without increasing property taxes in 1977 or 1978, or without issuing budget notes in 1976 or 1977. The P.B.A. further argued that there is a gross disparity between Buffalo police wages as compared with contiguous towns and comparable cities in New York State. In addition, the P.B.A. points out that the cry of inability to pay has resulted each year in lower real wages for a City police officer.

The arguments of the P.B.A. could easily be adopted by this panel if it were not for the City's financial difficulties. An accumulated deficit of approximately \$13.6 million has affected the ability of the City to borrow necessary funds from the financial community to fulfill their fiscal needs. Property abandonment, shrinking tax collections, fleeing population and industry, high unemployment and a declining tax base have compounded the City's problems.

The City has a reserve in their 1976-77 budget for uncollected taxes of \$4.5 million, however, last year uncollected

taxes amounted to \$5.9 million. The Buffalo Municipal Housing Authority is running at a deficit of \$1.7 million with no relief in sight. The City has appropriated \$1.7 million for Judgment and Claims but one Claim for Back Wages to Skilled Tradesmen equals the \$1.7 million reserve resulting in a deficit in this account of \$1.8 million.

The City administrators, with an eye toward avoiding a control board for the residents of the City, are making an all-out effort to reduce the City deficit and restore investors' confidence. However, the fiscal problems of the City must be weighed against the services performed by a police officer. A City police officer must perform his services in the wake of an increasing crime rate coupled with a drop in manpower. No one can deny that the increased cost of living has taken its toll on a policeman's salary. The Bureau of Labor Statistics reported in April of this year that it cost more to live in the Buffalo area than the national average; of 40 cities surveyed, only six were more costly to live in than Buffalo.

After carefully weighing all of the evidence, we find it necessary to reject the Fact Finder's recommendations of a six percent non-recurring bonus, and award a 5% salary increase

retroactive to July 1, 1975. We have rejected the recommendation of a non-recurring bonus because in our judgment, it will set a dangerous precedent and frustrate attempts by the parties to negotiate their own agreement.

A 5% salary increase, we believe, is within the ability of the City of Buffalo to fund. The City for the past four fiscal years has consistently realized an increase in sales tax revenue. The P.B.A. alleges the City will realize a 20% gain in sales taxes. This estimate was based on a sales tax increase of 26% for the first quarter of 1976. Sales taxes, however, for the second quarter of 1976 dipped 11% below the comparable quarter for 1975. Accordingly, we do not agree with the P.B.A.'s estimate of a 20% increase. However, the facts establish the City of Buffalo will realize additional sales tax revenue of at least \$1 million over their estimate for their 1976-77 budget. Two additional sources that may aid Buffalo in funding this award are an increase in state revenue sharing and a recently enacted federal appropriation Public Work Bill. Although these two sources are not guaranteed, Buffalo may realize approximately \$6 million in relief.

The City administrators may, however, elect to take other appropriate fiscal action to fund this award and continue their fight to cure Buffalo's fiscal ills. Buffalo police

officers can surely be asked to share in this fight, but cannot be expected to bear the full burden of the City's fiscal problems.

We further reject the Fact Finder's recommendation to increase the uniform allowance to \$300 per year from \$250. Although we recognize uniform costs have increased, we cannot in light of our award of a 5% salary increase, ask the City to incur this additional cost.

We adopt the recommendation of the Fact Finder that there be no change in rank differential, no up-grade of Desk Lieutenant salary and no shift differential.

We further adopt the recommendation of the Fact Finder that detectives may be transferred back to the uniformed ranks without cause within their first 18 months of their promotion and then thereafter, any such transfer must be based on cause after a hearing. This award, however, shall be effective 60 days from the date of this award. This will give the present commissioner an opportunity to assess his present detective staff before they attain tenure by this award.

We accept the recommendation of the Fact Finder to reject the P.B.A.'s request that long weekends (a four day weekend) be available to all officers every third week.

The panel rejects the recommendation of the Fact Finder to include an officer transfer within the grievance procedure. We believe the Commissioner should have the right to transfer men without the necessity of being challenged by the grievance procedure. The P.B.A.'s insistence that a transfer is a stigma and a blot on an officer's record is clearly covered by the argument between the parties requiring a written reason to be included in a police officer's personnel file. To allow a police officer to grieve his transfer would, in our opinion, be too restrictive on management.

Lastly, we adopt the recommendation of the Fact Finder not to change the bereavement leave provision.

For the reasons stated above and after carefully considering all of the evidence submitted, we hereby make the following award:

1. A 5% salary increase be paid for the fiscal year 1975-1976 retroactive to July 1, 1975.

2. No increase in the annual uniform allowance.
3. No change in rank differential.
4. No upgrade of Desk Lieutenant's salary.
5. No shift differential.
6. Detective and Detective Sargeant after 18 months of service may be removed from their position only for cause. This provision is to be effective 60 days from the date of this award.
7. No provision for long weekends.
8. No provision allowing a police officer to grieve a transfer.
9. No change in bereavement pay.

RESIDUAL MATTERS

As to any and all remaining demands, there shall be no change in the existing collective bargaining agreement between the parties.

  
THOMAS N. RINALDO

  
AL SGAGLIONE

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ROBERT E. CASEY, JR.

STATE OF NEW YORK)  
COUNTY OF ERIE ) SS:  
CITY OF BUFFALO )

On this 30<sup>th</sup> day of August, 1976, before me, the subscriber, personally appeared THOMAS N. RINALDO, to me personally known and known to me to be the same person described in and who executed the within Arbitration Award and he acknowledged to me that he executed the same.

*Denis A. Scinta*

Notary Public: Erie County, New York  
My Commission expires: 3/30/7

DENIS A. SCINTA  
Notary Public, State of New York  
Qualified in Erie County  
My Commission Expires March 30, 1977

STATE OF NEW YORK)  
COUNTY OF ALBANY ) SS:  
CITY OF ALBANY )

On this 26<sup>th</sup> day of August, 1976, before me, the subscriber, personally appeared AL SGAGLIONE, to me personally known and known to me to be the same person described in and who executed the within Arbitration Award and he acknowledged to me that he executed the same.

*Madeline M. Scuderi*

Notary Public: Albany Co., N.Y.  
My Commission Expires: 3/30/78

STATE OF NEW YORK)  
COUNTY OF ERIE ) SS:  
CITY OF BUFFALO )

On this            day of August, 1976, before me the subscriber, personally appeared ROBERT E. CASEY to me personally known and known to me to be the same person described in and who executed the within Arbitration Award and he acknowledged to me that he executed the same.

Notary Public : Erie County, N.Y.  
My Commission expires: 3/30/7

STATE OF NEW YORK : CITY OF BUFFALO  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of the Compulsory  
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DISSENTING OPINION

Case No. CA 0092  
M75-687

Having read the opinion and the award of the majority members of this panel, I am compelled to dissent from that part of the award which grants a 5% salary increase be paid for the fiscal year 1975-1976 retroactive to July 1, 1975. My reasons, hereinafter set forth, are based both on the facts evolved at the hearings held on July 13th, 14th and 26th and the provisions of law applicable thereto.

I

Inasmuch as I address myself only to the economic issue awarded by the panel, it is only fitting that the nature of municipal financing be explored.

A municipality, such as the City of Buffalo, deals in services. Unlike private industry, dealing in either products or services, a municipality is severely limited both by our constitution and statutes in the extent to which and manner in which it may collect the cost of providing its services to its consumers, i.e. the taxpayers.

Increased costs of labor in the private sector are ultimately reflected in the price of the product to the consumer. If the consumer is unwilling to pay the price, private industry has several alternatives: a) relocation of its facilities to a cheaper labor market, b) discon-

tinuance of its business or c) if conditions warrant it, bankruptcy.

These alternatives are not available to a municipality, however. By definition, relocation is impossible. Discontinuance of its function would lead to complete social disruption. Bankruptcy, or an emergency financial control board, is repugnant to our representative form of government which is based on placing the control and direction of its affairs in the elected representatives of the people.

It remains, therefore, for the City of Buffalo to continue to provide services to its constituents and, within the parameters of the constitution and statutes of New York, to finance these services with tax dollars.

The primary sources of revenue derived by the City of Buffalo come From:

- a) real property taxation
- b) state and federal revenue sharing
- c) a contractual percentage of the Erie County Sales Tax

Of a total budget of \$257,048,939 for 1976-77, the City of Buffalo seeks to realize \$89,534,938 from the real property tax levy. The extent of the real property tax levy is controlled by the Constitution of the State of New York and is restricted to 2% of the full value of its real property plus a sum equivalent to debt service for capital improvements.

When large cities with dependent school districts found that the creeping costs of an inordinately generous employee pension system precluded them from providing essential services, the New York State Legislature sought to alleviate their plight by excluding pension and social security costs from the 2% constitutional taxing limit. Several years after its effective date and at a time when additional taxing power

was being used by the City of Buffalo, inter alia, the New York Court of Appeals struck down the legislation as unconstitutional, placing the City in the position of imminent failure. Emergency legislation was enacted in 1974 and again in 1976, permitting the City of Buffalo and others to continue to tax beyond their constitutional limit in anticipation of a re-vamp of municipal finances by the constitutional convention which may be reasonably expected to convene in 1979.

Under the 1976 emergency legislation, however, the City of Buffalo may not raise its taxes on real property after the fiscal year which began on July 1, 1976. Section 2 of the Act (Exhibit "I") is very clear: "the total tax levied by any such city or school district shall not, by operation of this section, exceed the total tax levied by such city or school district in the fiscal year beginning on the first day of July, nineteen hundred seventy-six." It is clear that at least until July 1, 1980, there can be no increase in real property taxes in the City of Buffalo.

State Revenue Sharing, a major source of Buffalo's revenues, is authorized under Section 54 of the State Finance Law. Prior to the payment of any sums thereunder, however, there must be an appropriation by the State of New York. The state's fiscal year commences on April 1st, hence, until a budget is adopted (usually the last week in March) the City is not in a position to accurately forecast its exact revenue sharing funds.

In addition to state revenue sharing, Section 54-c of the State Finance Law provides for emergency assistance to the cities of Buffalo, Syracuse, Rochester and Yonkers. Under this section, Buffalo would receive approximately \$11.7 million, but again, only after an appropriation is made by the state. The emergency assistance act expires at the end of the City's current fiscal year.

Owing to the precarious fiscal plight of the State of New York, Governor Carey's 1976-77 budget decreased revenue sharing and emergency financial assistance by 5%. The budget as finally adopted by the legislature and signed by the governor restored the 5% cut in revenue sharing but did not restore this cut in emergency assistance. Hence in June 1976, the City of Buffalo realized only \$13.9 million dollars from the state pursuant to the emergency assistance act or a net decrease of \$800,000.

While the laws of evidence are not strictly applied in the type of hearing conducted by this panel, I can give no weight to a letter introduced by the PBA from State Senator McFarland which quotes one of his aides quoting a figure from an employee of the State Budget Office as to the revenues the City may anticipate from State Revenue Sharing.

Not until the 1977-78 state budget is adopted can anyone state with any degree of certainty whether the State will be in a position to maintain, much less increase revenue sharing to cities.

The State itself, seeking to extricate itself from the mire of excessive spending at the state level and the failures of moral obligation agencies, has itself embarked on a program of austerity while at the same time making maximal efforts to alleviate the problems of local governments, which, up to this time, have surfaced mainly in the larger cities of the State. A new concern of the State, one which has only recently emerged in full view, is the eroding fiscal stability of county governments. Several counties have refused to appropriate funds for increased welfare costs, claiming that the hundreds of millions of dollars involved are state rather than county obligations.

Erie County, which was looked upon as one of the more stable counties, finds that it will end the current fiscal year with a deficit published at some \$17 million and is looking at a real property tax increase of over 50%. It is not idle speculation that the governor and state legislature

will take a hard look at the needs of counties in formulating a 1977-78 State budget.

The Herculean task of preserving the fiscal integrity of the State government as well as local governments coupled with the need to minimize taxes to stimulate a languid private sector is certainly no harbinger of increased State aid to the City of Buffalo.

Unlike State revenue sharing and emergency assistance funds, which have no restrictions or guidelines for their use, no federal funds are filtered down to municipalities without specific uses and guidelines set forth both legislatively and administratively. The conference bill clearly indicates the intent of the Congress to require counter-cyclical funds to be used to maintain essential services. This is subject to further administrative interpretation. Legislative histories of such programs, however, indicate that proper uses of funds would be restricted to service oriented programs rather than pay raises for existing employees. It is noteworthy that the majority opinion, after carefully acknowledging the dire fiscal plight of the City, sets forth as its rationale for a pay increase the increasing rate of crime coupled with a diminution of numbers in the ranks of the police department.

If and when funds are appropriated for counter-cyclical purposes, it is not an unreasonable hypothesis that the thrust of the regulations governing their use will be toward restoration of services (e.g. additional police officers) rather than pay raises for existing employees. In any event, lacking an appropriation and regulations for its use, if appropriated, leaves this program in the realm of idle speculation that cannot properly be considered in measuring the ability of the city to increase salaries during the current fiscal year.

Considerable emphasis was placed during the hearings on the anticipated sales tax revenues to the City during its current fiscal year. In

the face of the uncontroverted testimony of Charles Kades, an expert in the area, the majority opinion has suggested that the City has underestimated sales tax revenues for 1976-77 and that this underestimate could justify part of the moneys needed to implement a pay raise.

The evidence clearly indicates that the City has estimated sales tax revenues 5% in excess of actual receipts in the preceding fiscal year. Mr. Kades characterized this estimate as liberal. (R. 7/26/76, p. 97) Tracing the history of the Erie County Sales Tax receipts for the City of Buffalo, Mr. Kades testified that a 5 to 6% increase is the most that could be honestly justified.

Inherent in his testimony, however, is an indication that the City may not indeed realize even the amount budgeted. Mr. Kades testified that the payment for the second quarter of 1976 (the fourth quarter of the City's 1975-76 fiscal year) was below the same quarter of 1975. Further, and perhaps more important, however, is the fact that this quarter, which ended May 31, 1976, included for the first time certain prepayments of tax for June from large vendors which should have produced a one-time, dramatic increase in sales tax revenues. The fact that, notwithstanding this prepayment, there was a decrease in revenues for the quarter indicates that sales tax revenues are on a downward trend in Erie County and hence, any projected increase is tenuous.

The bar graph contained in Exhibit "F" clearly indicates that the third quarter of 1975-76 is so atypical that it must be disregarded in making a projection of future sales tax revenues.

II

Far from showing a surplus in its 1976-77, the City has shown every indication of shortfalls in several areas:

Seasonal employees (R.7/26/76 p.17)	\$600,000.00
Judgments and Claims (exhibit "C")	1,837,000.00
Increased interest costs (R. 7/26/76 p. 17)	350,000.00
Unbudget reserve for uncollected taxes*	<u>500,000.00</u>

Total shortfall \$3,287,000.00

\*PBA contended \$5 million in uncollected taxes in 1975-76, the City \$6 million; \$4.5 million is appropriated (exhibit "B")

III

The ability of the City of Buffalo to operate during its fiscal year is in large measure dependent on short-term borrowings from the financial community. Approximately seventy-five to eighty million dollars must be borrowed in the last quarter of the fiscal year pending receipt of state aid payments. (R. 7/13/76 p. 127) To achieve short-term financing on this level requires the confidence of the financial community.

Exhibit "A" indicates that the City of Buffalo presently enjoys a less than satisfactory rating, a rating which in fact precludes banks from participating in the City's long-term financing. While the City's rating does not preclude banks from investing in short-term notes, there can be no question that the rating produces a hard reluctance on the part of the financial community to buy them and further causes a premium interest rate if they are sold.

In March of 1976 the situation became so severe that there were no purchasers for \$20,000,000 of short-term notes of the City. Faced with the

prospect of being unable to pay any of its employees, the City sought and obtained legislation to permit it to invest an equivalent sum in New York State tax anticipation notes in return for an advance of revenue sharing funds.

Legislation to allow this same technique to be used during this fiscal year was passed by the New York State Senate but dies in the Assembly Ways and Means Committee. Hence, the City stands now in a position completely dependent on the financial community for short-term borrowing.

The most striking reason for the low credit rating of the City of Buffalo, and the concomitant reluctance of the financial community to invest in the City's short-term notes, is the deficit which has been carried from year to year over the past several years. A deficit connotes an inability to pay day-to-day operating expenses from current revenues. The City, in its past two budgets has combatted this problem by further reducing manpower and by providing reserve accounts for uncollected taxes and deficit reduction.

In its 1976-77 budget, the City eliminated a net 230 filled jobs by deleting or transferring 463 positions and, by transfer or addition, creating 233 new jobs. This resulted in substantial savings to the City.  
(R. 7/14/76 p. 86)

Faced with a recurring deficit in tax collections, the City has established a reserve account for that purpose (albeit \$500,000 less than that experienced in its last fiscal year).

Finally, the City has established a reserve account of  $\frac{1}{4}$  million to be applied to the accumulated deficit which is in the area of some ten million dollars. Thus, assuming the shortfalls referred to above can be trimmed by stepped up tax collection and further economies in government, the City will still end the 1976-77 fiscal year with an accumulated deficit of some six million dollars.

In the fiscal plans submitted by the PBA (exhibits 1, 6 and 13), the reserve account for elimination of the City deficit is referred to as "programmed surplus" and considered a potential revenue source to demonstrate the ability of the City to meet its demands. This characterization indicates a complete unwillingness to recognize sound accounting practices.

Without this reserve fund, the City will be unable to pay \$10 million of its day-to-day expenses in the current fiscal year. With the reserve fund, the City will still find itself \$6 million short. Total fiscal stability will elude the City until it can be brought back to a pay-as-you-go operating budget. The first two years of this program of revitalized stability have produced substantial results in terms of credibility in the financial community. To interrupt this program as PBA suggests, would inevitably lead to the failure of the City.

#### IV

There was abundant evidence introduced by both parties which bore on the issue of compensation of police officers in Buffalo compared to other municipalities.

It is undisputed that total compensation for a Buffalo police officer, excluding longevity pay, amounts to \$14,285.20. With maximum longevity pay, compensation reaches \$14,685.20. Neither of these figures includes fringe benefits, which include approximately 41.25% for Social Security and pension cost.

In comparing total employer cost per patrolman (Exhibit "F"), the City of Buffalo expends \$21,412.86 per year compared to an average in 11 comparable cities of \$16,986.17. These cities have a cost range of between \$13,444.28 (Nashville, Tennessee) to \$23,030.84 (San Jose, Cali-

ifornia.) The cost per patrolman in Buffalo exceeds the cost in such comparable cities as Cincinnati, Minneapolis and Pittsburgh. It is noteworthy that of all the cities cited, Buffalo has the lowest per capita income.

Both in establishing comparability and the ability to pay, other factors must be considered. Of the three largest cities in New York State (excluding the City of New York, Buffalo has the lowest per capita real estate valuation, hence the lowest real property taxing power.

Per capita valuation

Buffalo	\$5,226
Rochester	8,094
Syracuse	6,064

For a comparison to be valid, ability to pay must be a concomitant and necessary element. To compare the salaries of police officers in relatively poor metropolitan cities to the salaries paid in relatively wealthy suburban communities is not valid. Median income, real property tax base and funding sources are necessary components of comparability.

V

The total of the evidence presented herein indicates that the award granted by the majority of this panel will cost the city approximately three million dollars. Coupled with the shortfalls indicated in II, this would require new revenues during the current fiscal year of \$6,287,000.

The City Charter is clear, however, in requiring increased appropriations to be made only from confirmed increased revenue sources. It has not been demonstrated that there is any firm source of additional revenue from which to obtain the \$3,000,000 which the majority of the panel has awarded.

The testimony of the witness, Charles Kades, coupled with the continuing need of the City to rely on borrowings to complete its fiscal year and the charter restrictions, clearly shows that the City has no mechanism for

paying the award. Increased state revenue sharing, increased sales tax revenues and unrestricted use of federal counter-cyclical funds are not only speculative but improbable. To tamper with the City's reserve for eliminating its deficit is foolhardy. These approaches would not only be violative of the City Charter, but, as Charles Kades testified, could lead to further impairment of the city's borrowing capacity and possible invocation of sanctions under SEC rules and regulations.

It remains, therefore, that the only source of funding an award is from sums already appropriated in the current budget for operating purposes. But the theme running throughout the testimony of Captain Francis, a PBA witness, was that in the face of a rising crime rate there has been a decrease in manpower in the police department. The Commissioner of Police, Thomas Blair, agreed that there can be no further cuts in the police department if it is to continue to provide adequate service. To consider funding this award from the current police department appropriation, as suggested in the majority opinion, would act to cripple irreparably the department's function.

One of the major objectives of the Taylor Law is to assure "at all times, the orderly and uninterrupted operation and functions of governments." §200, N.Y. Civil Service Law) A proliferation of economic awards by panels such as this, completely oblivious to the imminent collapse of local governments, subverts the original intent of the law and can only lead to taxpayer rebellion against a statute which sought to do equity but instead is being used to gnaw away at essential services and to make taxes onerous and unconscionable.

It must be kept in mind that the award of the majority and the \$3,000,000 it will cost covers a contract period that ended on June 30, 1976. The door is left open for a further award for the current fiscal year which, based on past experience, can only further jeopardize the

future of the City.

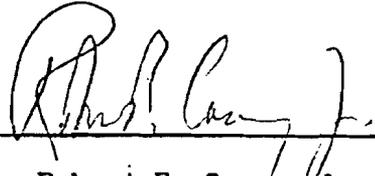
VI

I agree with the majority, and it is undisputed, that policemen have a difficult and hazardous job. I believe that they perform their job with devotion and suffer the hardship of inflation.

But it remains that no pay raises have been negotiated with other City unions during the past two years and the policemen cannot be considered in a vacuum. If increased cost of living demands an increase in pay for police officers, it follows that their fellow city employees deserve the same. But no one would suggest that the \$15,000,000 plus required for such an action is within the realm of possibility. It is only just, among themselves and to the taxpayer, that salary increases for city employees be deferred until the City's fiscal structure is strengthened.

VII

I concur with the majority in the awards numbered 2 through 9, inclusive, as set forth in the majority opinion.

  
Robert E. Casey, Jr.

STATE OF NEW YORK)  
COUNTY OF ERIE ) ss.:

On this 2nd day of September, 1976, before me personally appeared Robert E. Casey, Jr., 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.



THOMAS N. RINALDO 26427  
Notary Public, State of New York  
Qualified in Erie County  
My Commission Expires March 30, 1977

