

STATE OF NEW YORK

PUBLIC EMPLOYMENT RELATIONS BOARD

CASE NO. CA-0133; M76-831

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In the Matter of Arbitration

- between -

CITY OF CORTLAND

- and -

CORTLAND POLICE ASSOCIATION

* * * * *

**N.Y. S. PUBLIC EMPLOYMENT
RELATIONS BOARD
RECEIVED
JUN 30 1977
CONCILIATION**

AWARD OF PUBLIC ARBITRATION PANEL

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

A W A R D

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

1. The Fact Finder's recommendation on salary is reaffirmed, i.e., that 1977 Police Department base salaries be increased by 6.0% above the 1976 levels, and retroactive to January 1, 1977; and 1978 salaries be

raised by 5.0% above the 1977 levels. All increments and longevities normally falling due during 1977 - 1978 will be paid in accordance with the provisions of the current contract. The provisions of the current contract shall remain unchanged.

Samuel Cugalj

SAMUEL CUGALJ, Public Panel Member and Chairman

Charles N. Poskanzer

CHARLES N. POSKANZER, Employer Panel Member
Dissenting

Dr. Garth C. Lax

DR. GARTH C. LAX; Employee/Organization Panel Member

STATE OF NEW YORK)
COUNTY OF ERIE) ss:

On this twenty-first day of June 1977, before me personally came and appeared SAMUEL CUGALJ, to me known and known to me to be the individual described herein and who executed the foregoing instrument and he acknowledged to me that he executed the same.

BETTY J. HOWLAND
Notary Public, State of New York
Qual. Filed in Erie County
My Commission Expires March 30, 1978

Betty J. Howland
Notary Public

STATE OF NEW YORK)
COUNTY OF CORTLAND) ss:

On this 23rd day of June 1977, before me personally came and appeared CHARLES N. POSKANZER, to me known and known to me to be the individual described herein and who executed the foregoing instrument and he acknowledged to me that he executed the same.

INA C. RANDALL No. 12-3202400
Notary Public, State of New York
Qual. Filed in Cortland County
My Commission Expires March 30, 1979

Ina C. Randall
Notary Public

STATE OF NEW YORK)
COUNTY OF ONONDAGA) ss:

On this 22nd day of June 1977, before me personally came and appeared DR. GARTH C. LAX, to me known and known to me to be the individual described herein and who executed the foregoing instrument and he acknowledged to me that he executed the same.

Florence T. Jordan
Notary Public
FLORENCE T. JORDAN

Notary Public in the State of New York
Qualified in Onond. Co. No. 4527284
My Commission Expires March 30, 1978.

STATE OF NEW YORK

PUBLIC EMPLOYMENT RELATIONS BOARD

CASE NO. M76-831;
CA-0133

* * * * *

In the Matter of Arbitration

- between -

CITY OF CORTLAND

- and -

TIOUGA POLICE CLUB

* * * * *

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD
MAY 10 1977
CONCILIATION

STATEMENT OF CHAIRMAN OF PUBLIC ARBITRATION PANEL

Pursuant to the provisions of the Civil Service Law, Section 209.4, Robert D. Helsby, Chairman of the Public Employment Relations Board designated the following individuals on May 3, 1977 to serve as a Public Arbitration Panel in this proceeding:

Samuel Cugalj, Public Panel Member and Chairman
Charles M. Poskanzer, Employer Panel Member
Dr. Garth C. Lax, Employee Organization Panel Member

The Panel was charged by Section 209.4 to heed the following statutory guidelines:

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

applicable, take into consideration the following and any other relevant circumstances:

a. comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours, and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities;

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

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

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

A Fact Finding Report was submitted to the parties on March 23, 1977 by Robert L. Aronson. The Employee Organization (Tiouga Police Club) accepted the Report, but the Employer (City of Cortland) did not.

This Arbitration Panel conducted its Hearing in Cortland, New York on June 1, 1977. Both groups, hereafter referred to as "Tiouga Police Club (TPC)" and "City", were present, and they were afforded full opportunity to present evidence in support of their respective positions. Both had the option of filing post-hearing briefs, although only the TPC chose to do so.

Its brief was received seven (7) days after the Hearing.

The Panel agreed that each member would spend the next few weeks reviewing the voluminous material submitted, which included exhibits, briefs and post-hearing briefs. The Panel met in Executive Session before and after the Hearing, and on June 20, 1977 to discuss these matters. Results of these deliberations by the Panel are contained in the Award issued by the Panel on June 21, 1977.

Before the Hearing began, the Panel agreed that we could best discharge our responsibility by having the parties address themselves to the Fact Finder's Report, and support their positions of acceptance or rejection accordingly.

Relative to Paragraph (a), the TPC introduced a comparative salary exhibit including four (4) other larger municipalities and County Deputies within a 45 mile radius of Cortland, showing that they were behind in salary. In their post-hearing brief, they used the City's list of various communities across the State. The latter indicated that based on completed negotiations, the Fact Finder's recommendation was less than the average police settlements in those communities, i.e., the average settlements were 7% and 7.6%, as opposed to the Fact Finder's recommendation of 6% and 5% for both years. The City introduced an exhibit covering eleven (11) upstate non-metropolitan municipalities, and the Fact Finder notes that Cortland ranked eighth, 2% below the average. The Fact Finder considered the area of fringe benefits for TPC members, and he found that their "benefits are competitive", indicating that they are not out of line with the municipalities considered. The Fact Finder took note of the fact that the turnover rate was negligible over the last four years, concluding that salaries were not affecting job mobility.

There was voluminous data supplied by both parties relative to Paragraph (b), the ability to pay matter. In attempting to determine the most relevant data, the Panel and the Fact Finder had difficulty in relating Cortland's tax rate to other municipalities because the assessment practice upon which assessed valuation is based appears to vary greatly from municipality to municipality. In essence, the Fact Finder and the Panel agreed that for comparison purposes, full valuation is a more definitive indicator of a municipality's ability to pay than is assessed valuation. The Panel duly noted that the concept has also been endorsed by Cortland County (therefore, the City of Cortland), as full valuation will go into effect countywide January 1, 1978. While admittedly not the perfect comparison between municipalities, the total market value of property (full valuation) is a more accurate indicator, because it does reflect the spending potential each municipality can tap, if it so desires, to provide municipal services. The Panel constructed the following table which illustrates clearly this comparison between assessed and full valuation.

	<u>City of Cortland</u>		
	<u>Change In Assessed Valuation</u>	<u>Change In Full Valuation</u>	<u>Change In Tax Rate/\$1000 Assessed</u>
1966-77	+ 18%	+ 78%	+ 47%
1974-76	+ 4%	+ 25%	+ 60%
1976-77	+ 1%	+ 6%*	---

*Estimated based on full valuation of \$135,000,000

It is clear, then that the total market value of property in Cortland has increased at a very rapid pace. A look at the assessed valuation movement, however, indicates relatively mild growth, and does not reflect on the real wealth or ability of the municipality to support their budget. The Fact

Finder, upon review of both positions, "...found the Club's (TPC) analysis of this aspect is more convincing." A Panel majority agreed.

The TPC introduced material using the ability-to-pay criteria outlined in "Caso v. Coffey" 53 Appellate Division Reports, 2nd series, pages 373-384. The Fact Finder noted that these exhibits and others indicate that City property taxes were below the tax limit; the City bonded debt is below the bonded debt limit and has been steadily decreasing since 1971; the City's percentage of tax collection has been consistently high; per-capita income of Cortland County is in the mid-range in the State and in the Cortland labor market; the County is among the top counties in the State in income growth rate; the median household net income in the County increased by 15% from 1974 - 75; the City of Cortland is almost at the top of its labor market in terms of full valuation per capita; retail sales and sales tax revenues increased 14% from 1975 to 1976; the City has a higher percentage of its citizens in the major income producing years (ages 18 to 64) than any other city or county in the Central New York five-county region.

Further, the Fact Finder uses his recommendations on salary to work out the percent increase in City tax rate with no other changes to the budget, at 2.26% and 1.92% in each of the two years. A Panel majority believes this to be a reasonable, modest increase.

The Panel also took due note that despite its urgent pleading before the Fact Finder of not having the ability to pay beyond 5.5% over two years, the City subsequently offered 9% after the Fact Finding Report was issued, in order to reach a settlement. A Panel majority makes claim only of the flexibility in the 1977 budget to further support its Award.

The City indicated that the closing of the Brockway Plant, affecting

some 371 employees, is a new factor in buttressing its rejection of the Fact Finding Report. There is some question as to whether this closing was known to the Fact Finder. The Panel noted, however, that one-half of the 1977 tax liability for the firm's parent company has been paid, and the balance is due in August. The City did not make available to the Panel the impact of this closing to the taxpayers, other than possible litigation to settle any tax disputes arising from the closing. The plant's property tax constituted 5.5% of the total property tax paid for 1977; its assessed valuation is 1% of the total; not significant figures overall. Since 50% of the tax for 1977 has already been paid, the tax loss for the second half of 1977 will be relatively minimal, if any. The impact on the 1978 budget may reasonably be offset by the anticipated and continued increase in full valuation for the municipality, thereby providing the wherewithal for tax rates to be applied as required.

The City also pointed out that a local retail store closing recently will result in a loss in sales tax revenue of approximately \$100,000 annually, although only \$34,000 of that is allocated to the City. The City's contention that these monies will be lost due to the store closing is speculative. There is no sound reason to believe that purchasing, to the extent that it was done in this retail outlet, will cease now that the store has closed. Nothing was provided to alter the view that it is more likely that purchasing will continue, but redistributed in other retail establishments. The TPC also pointed out that this retail store paid its 1977 property and school tax in full.

With respect to Paragraph (c) above, there was nothing unusual brought out or developed at either the Fact Finding or Arbitration Hearings by either party.

Relative to Paragraph (d), the Fact Finder took due note of the TPC's argument for cost of living consideration, and indicated that the 1977

rise in consumer prices will be in neighborhood of 5% - 6%. The Panel is aware that this is an ever-changing rate, e.g., at the Fact Finding Hearing, the estimate was 5.3%. The latest Bureau of Labor Statistics indicates that consumer prices have moderated to .6% for May, and "experts" currently expect the rate of inflation for calendar 1977 to be 6% - 7% and possibly higher. A Panel majority saw no need to alter this estimate.

The Fact Finder was presented with data and reviewed areas relative to population trends, major industrial expansion for the five-county area, and found that all were favorable indicators in general. The unemployment figures for the relevant counties were 10.6% for Cortland, Onondaga County had 7.5%, Cayuga County had 12.5%. Cortland County's unemployment rate was a mixed bag, as this rate was bumped up by the Brockway Plant closing earlier this year.

The Fact Finder considered the question of productivity but found that the data submitted was not unusual and therefore not persuasive.

My esteemed colleague, the Honorable Charles Poskanzer, in putting up a spirited defense of the City's position, felt that the entire basis for the Fact Finder's Report was the cost of living. He felt it would be more reasonable to account for the inflationary rise after the fact, and not to base a salary increase on an anticipated cost-of-living increase. Providing the adjustment was not delayed, his position might have merit, but in these negotiations, the parties did not explore that approach. A Panel recommendation to that effect now would be detrimental. Mr. Poskanzer further believes that the Fact Finder's recommendations are based solely on the anticipated cost-of-living increase and not upon the other relevant circumstances prescribed in Section 209.4.

A Panel majority felt that the salary increase recommended is proper in view of the comparative salary and cost-of-living material presented to us, and is within the City's ability to pay as outlined earlier.

Based on all factors which Section 209.4 charged the Panel to consider, it is my opinion that the Award of the Panel is fair, equitable and warranted by the evidence presented at the Arbitration Hearing.

June 27, 1977
Buffalo, New York



SAMUEL CUGALJ, Public Panel Member
and Chairman