

JUL 15 1997

**CONCILIATION**  
OPINION AND AWARD

PERB CASE NO.

IA96-028  
M96-307

In the matter of the interest  
arbitration between,

THE CITY OF NORTH TONAWANDA POLICE  
DEPARTMENT,

Employer,

-and-

THE NORTH TONAWANDA POLICE BENEVOLENT  
ASSOCIATION,

Union.

Before the following Public Arbitration Panel:

Chairperson: Michael S. Lewandowski  
Chairman

Member: Patrick Daly  
Employee Organization Panel Member

Member: Jeffrey N. Mis, Esq.  
Public Employer Panel Member

Appearances:

For the City: Robert Sondel, Esq.

For the PBA: W. James Schwan, Esq.

On December 18, 1996, the Patrolmen's Benevolent Association of the City of North Tonawanda ("PBA") filed a petition for compulsory interest arbitration with the New York State Public Employment Relations Board ("PERB"). The City of North Tonawanda ("City") and the PBA had reached impasse in their negotiations for a successor Agreement to the Collective Bargaining Agreement between the parties that expired on December 31, 1996.

In accordance with Section 209.4 of the Civil Service Law, the undersigned were designated as the Public Arbitration Panel members by letter dated February 5, 1997 from PERB. The panel met and conducted a hearing in the City of North Tonawanda on April 17, 1997 and April 18, 1997.

At the hearing, the parties were afforded a full opportunity to present relevant evidence in support of their positions. Each presented witnesses for examination and cross-examination and documentary evidence including data collected concerning police departments that they considered to be comparable to that of the City. The Public Arbitration Panel met in executive session on June 16, 1997 in the City of North Tonawanda, New York. The content of this opinion and award reflects the results of consideration of the evidence presented against the criteria contained in the Fair Employment Act. The final disposition of the issues is the result of the deliberations of the panel. Although the panel may have been split with regard to certain issues such as the designation of comparable police units, the panel reached unanimous agreement with respect to this award.

The evidence presented by the parties was considered against the criteria set forth in the Law including but not limited to a comparison of wages, hours and conditions of employment of other

employees performing similar services or requiring similar skills under similar working conditions; the interests and welfare of the public and the financial ability of the public employer to pay; the peculiarities in regard to other professions such as hazard, educational qualifications, training and skills and the terms of collective agreements negotiated between the parties in the past providing the compensation and fringe benefit package that currently exists for the bargaining unit members.

There was unanimous agreement that the duties performed and the responsibilities assumed by the members of the PBA are consistent with those performed by employees who hold the title of Police Officer and associated titles in the jurisdictions offered by the parties for consideration for comparison by the panel.

### ISSUES

The PBA advanced the following proposals<sup>1</sup> during the arbitration. The proposal are summarized below.

1. The term of the agreement to begin at 12:01 a.m. January 1, 1997 and to continue until midnight December 31, 1998 or until a new contract is signed.
  
3. Effective January 1, 1997 the base salary schedules be

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<sup>1</sup> Both PBA and City proposal listed here carry the same proposal number that they had when originally submitted by the parties.

increased six (6%) percent across-the-board with the same six (6%) percent increase effective January 1, 1998.

5. Effective January 1, 1997, the City shall contribute the amount of Twenty Seven Thousand (\$27,000.00) Dollars each year to the Police Benevolent Association to be used toward the payment of dental bills. Any excess remaining in said account shall be applied toward the payment of dental bills in future years.
6. Effective January 1, 1997, the City shall contribute the amount of Sixteen Thousand (\$16,000.00) Dollars each year to the Police Benevolent Association to be used toward the payment of optical bills. Any excess remaining in said account shall be applied toward the payment of optical bills in future years.
9. "One day's pay" shall mean the amount obtained by dividing an employee's annual salary by 251 days. For leap years, the annual salary shall be divided by 252. This formula shall also be used in computing an employee's overtime rate of pay.
11. (c) not more than a total of thirty-six (36) days of leave (whether granted to one employee or more than one employee) for this purpose will be granted during any year of this Agreement. In an emergency, for good cause shown, the Chief of Police may grant up to an additional two days of leave during this agreement.
12. The City shall grant a leave of absence without loss of pay to an employee who is absent from work because of being required to attend jury duty.
13. An employee who works overtime shall have the choice of being paid at the overtime rate of pay or taking compensatory time. If the employee chooses compensatory time, the time will be added to the overtime wheel. Compensatory time, not used, may be accumulated and any balance remaining will be paid to the employee at time of retirement.

16. Expand the coverage of individuals eligible for special duty pay to include:

Radar Operator  
Breathalyzer Operator  
Mayor Crimes Task Force  
Sexual Abuse Task Force  
Field Training Officer

17. In addition to the regular rate of pay, Police Officers shall be paid a shift premium as follows:

- A) 3:00 p.m. to 11:00 p.m. shift - sixty (\$.60) cents per hour for each hour worked.
- B) 11:00 p.m. to 7:00 a.m. shift - eighty (\$.80) cents per hour for each hour worked.
- C) Relief Captain and Relief Lieutenant shall be paid a shift differential of seventy cents (\$.70) per hour for each hour worked.

There will be no deviation in payment of shift differential because of authorized leave.

20. Any person assigned to the reserve position shall be paid the daily detective's rate of pay. The reserve position shall be filled by seniority provided the eligible officer is NYSPIN certified.
23. At time of retirement, any unused personal leave time shall be paid to the retiring officer.

The City advanced the following proposals, summarized below.

6. Wage Schedules remain as is.
8. Eliminate all Special Duty Pay.
9. Eliminate time and one-half payment for briefing time and instead make a lump sum payment on the first pay day in March following the calendar year for which the payment is earned. The City further proposes to limit the days on which briefing time is paid.
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10. New employees would be paid 80% of the Step 1 salary while attending the police academy. Thereafter, during training, new employees would be paid 90% of the Step 1 salary.
11. Limit credited court time for certain court appearances outside the City to three (3) hours.
14. Reduce the holiday pay from eight (8%) percent of annual salary to seven (7%) percent.
17. Eliminate the sick leave bank.
19. Reduce health insurance coverage to the plan just below that presently offered to the PBA. Increase the BC/BS deductible from \$50.00 to \$100.00.
22. Implement a random drug and alcohol testing program.

#### DISCUSSION AND ANALYSIS

After extensive review of the significant amount of evidence presented at the arbitration, the panel reached agreement that the evidence shows that the City of North Tonawanda, when total compensation is considered, pays its employees in Police Officer and associated titles less than paid by comparable employers. Using the comparable employer data submitted by the City, North Tonawanda police are paid total compensation below that paid comparable employers. There was agreement among the members of the panel that the City is well managed and has the ability to

pay the salary and benefit increases recommended here. The award that follows offers improvements in terms and conditions of employment that benefit both the members of the PBA and the City.

TERM. The term of this award shall be for a two year period commencing on January 1, 1997 and expiring on December 31, 1998.

SALARIES. The PBA had sought a six (6%) percent increase in each year of a two year agreement. The City initially proposed no increases. The panels reached agreement that the data presented concerning the City's ability to pay and the compensation paid comparable police units justify increasing salaries.

The terms of this award will increase the total compensation package of the PBA to within a half of a percentage point of the average of the City's comparable employees by the end of its two year term. Effective January 1, 1997 salaries/schedules will increase by two (2%) of the December 31, 1996 salaries/schedules. Effective July 1, 1997, salaries/schedules will be increased by two (2%) of the June 30, 1997 salaries/schedules. Effective January 1, 1998, salaries/schedules will be increased by two (2%) percent of the December 31, 1997 salaries/schedules. Effective July 1, 1998, salaries/schedules will be increased by two (2%) of the June 30, 1998 salaries/schedules.

DENTAL. The panel agreed to increase the amount of money the City contributes to the PBA for the payment of dental bill by

\$2000.00 for 1997 after the execution of this award. The City will contribute \$300.00 more in 1998.

OPTICAL. The panel agreed to increase the amount of money the City contributes to the PBA for the payment of optical bills by \$1000.00 for 1997 after the execution of this award. The City will contribute \$300.00 more in 1998.

JURY DUTY LEAVE. The panel agreed to accept the PBA's proposal to grant jury duty leave with pay to officers called to jury duty.

ACADEMY/TRAINING PAY. The evidence presented at the hearing shows that the City has no difficulty recruiting police officers. The data also shows that officers do not reach full productivity until completion of training. The panel agreed to accept the City's proposal to reduce pay for new officers to 80% of the Step 1 salary while the new officers are attending the Academy and 90% of the Step 1 salary during training. The new rates will apply to officers hired after the execution of this award.

COURT TIME. The panel agreed to adopt a modified version of the City's proposal. Article 7.21 will be expanded to read: "Officers assigned to another jurisdiction (i.e. Niagara County Drug task force, Major Crime task force, etc.) and actually performing police functions for another neighboring municipality pursuant to said

assignment will receive 4 hours of court time for appearances outside the City with the exception of County Court appearances which shall remain 6 hours.

RANDOM DRUG TESTING. The panel agreed to accept the City's proposal for the negotiation of a random drug testing policy. The parties agree that the City and the PBA will meet and negotiate a random drug testing policy to be implemented no later than January 1, 1998. This deadline may be extended by the mutual agreement of the parties. If the parties reach an impasse regarding the substance of the proposed policy, either party may refer the matter to the interest arbitration panel for resolution.

AWARD

1. The term of this award shall be for two years commencing January 1, 1997.
  2. Salaries will be increased as follows. Two (2%) percent on December 31, 1996 salaries effective January 1, 1997. Two percent (2%) on June 30, 1997 salaries effective July 1, 1997. Two (2%) percent of December 31, 1997 salaries effective January 1, 1998. Two (2%) percent of June 30, 1998 salaries effective July 1, 1998.
  3. Dental fund payments will be increased \$2000.00 for 1997 after the execution of this award. The amount will be increased by \$300.00 for 1998.
  4. Optical fund payments will be increased \$1000.00 for 1997 after the execution of this award. The amount will be increased by \$300.00 for 1998.
  5. PBA members required to serve jury duty will receive jury duty leave with pay.
  6. New officers hired after the execution of this award will receive 80% of the Step 1 salary while attending the Academy and 90% of the Step 1 salary during training.
  7. Section 7.21, Court Time, expanded to read: Officers assigned to another jurisdiction (i.e. Niagara County Drug task force, Major Crime task force, etc.) and actually performing police functions for another neighboring municipality pursuant to said assignment will receive 4 hours of court time for appearances outside the City with the exception of County Court appearances which shall remain 6 hours.
  8. The parties agreed that a mandatory drug testing policy will be negotiated and implemented no later than January 1, 1998. This time frame may be extended by the mutual agreement of the parties. If the parties reach an impasse on the substance of the policy, either party may refer this matter to the interest arbitration panel.
  9. All proposals not made a part of this award, as listed above, stand rejected by the panel.
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