

NEW YORK STATE EMPLOYMENT RELATIONS BOARD

In the matter of the Interest  
Arbitration between,  
  
THE CITY OF NORTH TONAWANDA.  
Police Department,  
Public Employer,  
  
-and-  
  
THE NORTH TONAWANDA POLICE BENEVOLENT  
ASSOCIATION,  
  
Union.

OPINION AND AWARD

PERB CASE NO.

IA2003-026

M2003-170

Before the following Public Arbitration Panel:

Chairperson: Michael S. Lewandowski  
Chairman  
  
Member: David Rouselle  
Employee Organization Panel Member  
  
Member: Shawn P. Nickerson, Esq.  
Public Employer Panel Member

Appearances:

For the City: Robert Sondel, Esq.  
  
For the PBA: James Schwan, Esq.

NYS PUBLIC EMPLOYMENT RELATIONS BOARD  
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**CONCILIATION**

The Patrolmen's Benevolent Association of the City of North Tonawanda ("PBA" "NTPBA") filed a petition for compulsory interest arbitration dated January 5, 2004 with the New York State Public Employment Relations Board ("PERB"). The petition was responded to by the City of North Tonawanda, New York ("City"). The 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, 2003. The parties were unable to reach a successful conclusion to their negotiation efforts in the matter.

In accordance with Section 209.4 of the Civil Service Law and PERB's rules, the undersigned were designated as the Public Arbitration Panel members by PERB on March 19, 2004. The panel met and conducted a hearing in the City of North Tonawanda on June 24, 2004. 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 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. The issues reported on here were decided by a majority vote of the panel.

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 during the arbitration. The proposal are summarized below.

1. The work day calculation contained in Section 1.42 of the Agreement shall be changed to reflect actual days worked, 244 days. (NTPBA #3)
  
3. Effective January 1, 2004, the base salary schedules be increased eight (8%) percent across-the-board with the same eight (8%) percent increase effective January 1, 2005, and ten (10%) effective January 1, 2006. (NTPBA# 14).
  
4. Section 12.12, Dental Plan. Increase the nineteen thousand dollar (\$19,000.00) appropriation amount to thirty thousand dollars (\$30,000.00). NTPBA#6
  
5. Section 12.15, Longevity Pay. Increase all steps by five hundred dollars (\$500.00). NTPBA#8

6. Section 12.21(A), Uniform Allowance. Increase the three hundred dollar (\$300.00) maintenance allowance to seven hundred and fifty dollars (\$750.00). NTPBA# 9

7. Section 12.24 Clothing Allowance. Increase the five hundred dollar (\$500.00) clothing allowance to one thousand, five hundred (\$1,500.00) dollars.

Add this new sub-section, "12.24(a) to section 12.24 and the following wording shall be used, "Upon promotion to any position requiring the use of plain clothing, there shall be a one time allowance of two thousand dollars (\$2,000.00) in a separate check, following the first full pay period of such promotion." NTPBA # 10

8. Section 7.11(4) Field Training Officer Pay. Field Training Officers shall be paid at the same rate as the Senior Desk Officer. NTPBA# 15

9. Section 7.16, Shift Differential. Add new subsection "7.16." Section shall read, "All officers outside the patrol division shall receive the 3-11 "shift differential." NTPBA# 17

9. Section 12.12, Optical Plan. Increase the nineteen thousand dollar (\$19,000.00) appropriation to thirty thousand dollars (\$30,000.00). NTPBA#7

The City advanced the following proposals, summarized below.

1. Wage Schedules shall not be increased in 2004, shall increase one percent (1%) on January 1, 2005, two percent (2%) on January 1, 2006 and three percent (3%) on January 1, 2007.
2. §7.15. Eliminate entire section.

3. §7.21. If an employee is required to make a court appearance while he is off duty, he shall be credited with one (1) hour of time off for each hour or portion of an hour while he is so appearing, provided that for each day on which an employee so appears, he shall be credited with a minimum of three (3) hours of time off for Court appearances in the North Tonawanda City Court or four (4) hours for court appearances in other courts within the City of North Tonawanda or six (6) hours of time off for appearances outside the City of North Tonawanda. Notwithstanding the above, if a court appearance is scheduled less than three (3) hours prior to scheduled duty, such time shall be credited as actual time spent at the court appearance at the time and one-half rate of pay, rounded up to the closest full hour. For the purposes of this paragraph "court appearance" means an appearance before any court or administrative agency (or an officer of either) which is required as a result of the performance of an employee's duty.

The balance of the rest of the section shall remain as it is in the present agreement.

4. §7.37. :t) Employees in the patrol units wishing to change their shift assignment during the period between January 1<sup>st</sup> and December 31<sup>st</sup> shall be allowed to do so only if an opening exists on the shift the employee desires and the change is made through seniority bidding with the consent of the Chief of Police, and further provided that the Chief of Police is satisfied with both the mix of seniority on each shift and the manpower levels with regard to same.

In agreement with the transfer, the employee sacrifices all vacation picks remaining scheduled during the calendar year and is required to re-bid any remaining vacation time as availability exists on the new shift.

5. §10.53. Subsequent to the initial funding of the sick leave bank, as any member of the North Tonawanda

Police Department becomes a participant in the sick leave bank program pursuant to paragraph 10.52 hereof, the employee shall contribute one (1) day to the sick leave bank.

Should the bank's level of sick days ever be reduced to fifty-one (51) days or less, then in that event, the sick leave bank will be refunded as follows: Written notice will be posted in Headquarters of the North Tonawanda Police Department that refunding is called for and will take place. Each participating employee will contribute one (1) day of accumulated sick leave to the said bank by executing a document stating his intention to do so. Such refunding shall take place automatically and under the direction and supervision of the administrative or personnel office as the City is responsible for the crediting and paying of sick leave time.

6. §11.11(c). Not more than a total of twelve (12) 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 any year of this agreement.
  
7. §12.12, The city shall provide the following health insurance program:
  - (a). Community Blue 201/201 Plus Plan with five dollar (\$5.00) prescription co-pay, if available, and no contraceptives. If the five dollar (\$5.00) prescription co-pay becomes unavailable, the parties agree to negotiate a mutually agreeable reasonable alternative.
  
  - (b). The parties agree that the employer shall have the right to select alternative insurer to provide equal or better coverage, but only with the consent of the NTPBA.

(c). For employees hired after January 1, 1993, said employees will be required to contribute the cost of twenty-five percent (25%) of the cost of such insurance to the City by way of payroll deduction spread equally over the entire year. Said new hires will be required to pay this twenty-five percent (25%) by payroll deduction for a period of three (3) years from the date of their hire. Once said employees reach their third anniversary date they shall be entitled to fully paid coverage without any contribution on their part. . Notwithstanding the above, employees hired after January 1, 2004, said employees will be required to contribute the cost of twenty-five percent (25%) of the cost of such insurance to the City by way of payroll deduction spread equally over the entire year for the entire term of their employment.

(The section regarding dental insurance beginning at 12.12(c) will be renumbered to be 12.12(d) and will continue to be included in the agreement.)

8. § 12.24. The employer shall provide a clothing allowance by the voucher system of a maximum of two hundred fifty dollars (\$250.00) to each employee who is required to or must use plain clothes as a Police

#### DISCUSSION AND ANALYSIS

First, the parties (the City and the PBA) entered into a signed consent Agreement dated June 24, 2004 specifically giving the panel authority to issue an award covering a five (5) year period commencing January 1, 2004 and ending December 31, 2008. The parties also agreed in writing to accept City proposals concerning the language of Sections 5.22, 7.37(a), 7.37(b) such

proposals are incorporated in this award.

After 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 salaries and benefits that are generally in line with comparable employers although the City asserts that its officers receive compensation somewhat higher than comparable departments pay. 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 a five year period commencing on January 1, 2004 and expiring on December 31, 2008.

SALARIES. 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 PBA currently has 45 bargaining unit members. Four (4) budgeted positions will not be filled producing a savings for the City effecting an approximate savings of \$200,000.00 annually. The City's official statement for bond anticipation notes (PBA exhibit 3) shows the City has a stable tax base with total revenues slightly increasing from \$23,252,097 in 2001 to \$24,434,615 in 2002 (the last years reported in the statement. A supplemental statement dated December 2003 (PBA exhibit 3A) shows total revenues increasing to \$25,198,438 at the end of the fiscal year ending December 31, 2003. The 2003 tax levy of \$10,921,398 represents approximately 48% of the maximum taxing power available to the City (PBA exhibit 5, Notes to Financial Statement, December 31, 2003). The City currently enjoys a municipal bond rating of A2 as assigned by Moody's Investor Services, Inc. (PBA exhibit 3, (10)).

Additionally, as the table below shows, the City's State Aide continues to slightly increase according to the most recent figures presented to the panel (PBA exhibit 3 (A-4)).

**State Aide**

Fiscal Year 2001	\$3,348,906
Fiscal Year 2002	\$3,351,507
Fiscal Year 2003	\$3,660,355

The City continues to pay off its debt as shown in the table listed below. The City currently is at 15.29% of its' debt limit.

**Outstanding Debt**

Fiscal Year 1998	\$18,397,887
Fiscal Year 2002	\$16,306,278
Fiscal Year 2003	\$15,086,766

The data presented shows that each one percent (1%) of salary increase would cost the City \$23,828.97 (City exhibit 3). The City projects saving approximately \$200,000 by not filling the currently vacant police officer positions. Additionally, the City has cut 21 positions thru lay offs and attrition.

In summary, the City's fiscal position may generally be described as good with the ability to pay the increases contained in this award. The fact that the City does not enjoy significant growth and the data available about comparable salaries paid comparable police officers demonstrates the need for the panel to contain the increases to the levels found appropriate here.

The data presented (PBA exhibit 1) by the PBA shows that while base salaries of North Tonawanda police initially start out above the PBA proposed comparable departments (Lockport, Niagara Falls and West Seneca), the salaries paid to North Tonawanda officers fall significantly below the comparable departments as officers move up the salary schedule. The data presented by the City (City exhibits 4A, 4B and 4C) showing salaries paid officers in the City of "Tonawanda, Jamestown and Lockport) show salaries paid North Tonawanda police officers exceed those paid the officers in the comparable departments as proposed by the City. The panel notes that the salaries paid to officers in Tonawanda, the geographically closest City, show that those officers receive slightly more pay (\$40,354 for City of Tonawanda officers compared to \$39,084 for North Tonawanda

officers) in year one of employment but receive greater salaries in the advanced steps of the salary schedule (City of Tonawanda top step - \$49,745, North Tonawanda - \$51,202). Such data suggests that modest increases are appropriate.

Based on the above data, the panel agrees that the following salary increases are appropriate, justified and within the City's ability to pay. The following increases will increase salary schedules as noted.

**Salary Increases**

Effective January 1, 2004	2% across the board
Effective January 1, 2005	3% across the board
Effective January 1, 2006	3% across the board
Effective January 1, 2007	4% across the board
Effective January 1, 2008	3% across the board

LONGEVITY PAY: Article 12.15 currently pay the following

Longevity payments

Years of Service:

5 years, but less than 10 years	\$750.00
10 years, but less than 15 years	\$950.00
15 years, but less than 20 years	\$1,150.00
20 years and over	\$1,350.00

The data presented shows that the majority of comparable police units pay greater Longevity payments in the later years of service than the City pays its officers. City of Tonawanda officers receive payments ranging from \$1,475.00 to \$2,100.00 from 15 years of service forward. Niagara Falls officers receive payments ranging from \$2,118.00 to \$3,763.00 from year 15 on forward. Town of Tonawanda police receive payments ranging from \$1,350.00 to \$2,225.00 from year 15 on forward.

Based on the above data and considering the City's ability to pay, the panel finds it appropriate to increase Longevity pay in the 15 and 20 year steps by \$500.00.

UNIFORM ALLOWANCE: Article 12.21 provides for a payment of \$300.00 annually for the maintenance of uniforms. The North Tonawanda police currently have the lowest uniform allowance of all the proposed comparable agencies. With one exception, no police agency identified as a comparable police department pays less than \$500.00 annually for uniform cleaning and/or maintenance. Based on the foregoing data, the panel finds it appropriate to increase the uniform allowance contained in the parties' Agreement by \$200.00 annually.

HEALTH INSURANCE: The panel recognizes that the cost of health insurance is a growing and continuing concern for all employers, including the City. In recognition of the increases in cost, the panel finds it appropriate to include the following changes in the award. Such changes will assist in providing the monies necessary to fund the monetary increases found elsewhere in this award.

With regard to pension and insurance, the panel finds the following amendments to Section 12.1 to be appropriate.

12.12 For employees hired after January 1, 2004, said employees will be required to contribute the cost of twenty-five percent (25%) of the cost of such insurance to the City of North Tonawanda by way of payroll deduction spread equally over the entire year for a total of six (6) years from the date of their hire. Said new employee will be required to contribute ten percent (10%) of the cost of such insurance to the City of North Tonawanda by way of payroll deduction spread equally over the entire year for an additional four (4) years. Once said employee reaches their tenth anniversary date they shall be entitled to fully paid coverage without any contributions on their part.

(a) The City shall provide the following health insurance programs: Community Blue 201/201 Plus Plan with a five dollar (\$5.00) prescription co-pay and no contraceptives. Blue Cross hospital medical/surgical select 90/91 policy plan.

(a) (i) The parties agree that the employer shall have the right to select an alternative insurer to provide equal or better coverage, but only with the consent of the NTPBA>

(a) (iii) The City will agree to pick up a rider if available with the current health care providers to maintain co-pay on prescriptions at five dollars (\$5.00). If no rider is available the City agrees to self-insure the difference so the employee's co-pay remains at five dollars (\$5.00).

The preceding reflects the entire terms of the panels award. All other proposals not addressed here are deemed rejected by the panel.

AWARD

1. The term of this award shall be for five years commencing January 1, 2004.
2. The changes in salary and benefits found in the body of this opinion and award under the Discussion and Analysis section shall constitute the terms of this award.
3. All proposals not addressed and/or incorporated in the Discussion and Analysis section of this opinion and award are deemed rejected and dismissed.

AFFIRMATION

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

We, the public arbitration panel identified above, do hereby affirm upon our oath as Arbitrators that we are the individuals described in and who executed this instrument, which is our award. The award may also contain concurring or dissenting opinions from panel members. Any such concurring or dissenting opinions are attached and made part of this award.

Date: 4/29/04  
 concur/~~dissent~~ *mf*

*Michael S. Lewandowski*  
 MICHAEL S. LEWANDOWSKI

Date: 4/30/04  
 concur/~~dissent~~ *SPN*

*Shawn P. Nickerson*  
 SHAWN P. NICKERSON

Date: 4/30/04  
 concur/~~dissent~~ *DMR*

*David M. Roussele*  
 DAVID ROUSSELLE