

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD
CASE: IA96-040; M96-353
PANEL CHAIR: SAMUEL CUGALJ

* * * *

In The Matter of Interest Arbitration

AWARD

- between -

OF

CITY OF CANANDAIGUA

ARBITRATION

- and -

AND

CANANDAIGUA POLICE BENEVOLENT
ASSOCIATION, LOCAL 1170, CWA

OPINION

* * * *

REPRESENTATIONS

**NYS PUBLIC EMPLOYMENT RELATIONS BOARD
RECEIVED**

NOV 14 1997

For the PBA

CONCILIATION

Peter C. Nelson, Esq., Spokesman
Edward Guzdek, President Police Conference of NY, Witness
Daniel Ball, PBA President
Truman Bells, PBA Negotiating Team

For the CITY

Edward A. Trevvett, Esq., Spokesman
Stephen C. Cole, Assistant City Manager
Daniel P. Kelly, Intern

Arbitration Panel

Samuel Cugalj, Chairman and Public Panel Member
William Bridgeo, Public Employer Panel Member
Robert Flavin, Employee Organization Panel Member

BACKGROUND

The City of Canandaigua (hereafter "CITY"), is one of two (2) cities in Ontario County and is located in the center of Ontario County, approximately 50 miles south of Rochester, New York. The 1990 census established the population at 10,725. Its economy is based on a mix of government, educational and health care institutions, light industry and retail businesses. The Canandaigua Police Benevolent Association, CWA Local 1170 (hereafter "PBA") represents approximately nineteen (19) sworn police personnel under the rank of Sergeant in the CITY.

Their two (2) year Collective Bargaining Agreement expired on December 31, 1996. On August 12, 1996, the PBA submitted its proposals for a successor agreement. A number of bargaining sessions were held without success. On February 21, 1997, the PBA filed a Petition for Interest Arbitration, and the CITY responded its Response to Petition and Cross-Petition on March 12, 1997. The New York State Public Employment Relations Board designated this three (3) member Public Arbitration Panel on May 14, 1997 to resolve their impasse.

A Public Hearing was held in Canandaigua, New York on August 26, 1997. At the Hearing, the Panel received extensive material from the parties in support of their positions, including Hearing Briefs, nine (9) CITY and thirteen (13) PBA Exhibits. The parties were given full opportunity to present argument in support of their positions on the open items, introduce evidence and witnesses, and to engage in their examination and cross-examination. They were given the opportunity to file Post Hearing Briefs and both were postmarked by the agreed upon date of September 18.

The Panel members independently reviewed their Hearing notes, Hearing Briefs, Exhibits, and Post Hearing Briefs, then met in Executive Session on October 1 and 14. The Panel fully discussed the merits of their respective arguments on the issues, the evidence submitted, and structured this AWARD in view of satisfying Section 209.4 (iii through vi) 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 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) qualifications; (2) physical 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 for salary, insurance and retirement benefits, medical and hospitalization benefits, paid time off and job security.**

(vi) the determination of the public arbitration panel shall be final and binding upon the parties for the period prescribed by the panel, but in no event shall such period exceed two years from the termination date of any previous collective bargaining or if there is no previous collective bargaining agreement then for a period not to exceed two years from the date of determination by the panel. Such determination shall not be subject to the approval of any local legislative body or other municipal authority.”

A W A R D

ISSUE 1 – TERM OF CONTRACT (ARTICLE XXII)

The term of this Agreement shall be from January 1, 1997 through December 31, 1998.

ISSUE 2 – WAGES (ARTICLE V, APPENDIX A)

- A) Effective 1/1/97, the 1996 wage schedule shall be increased by three percent (3%). Retroactivity shall be paid within thirty (30) days of this AWARD.
- B) Effective 1/1/97, each member of the bargaining unit shall receive an eight hundred (\$800) Incentive Bonus, which shall not be added to the Schedule A wage schedule. This Bonus shall be paid within thirty (30) days of this AWARD.
- C) Effective 1/1/98, the new 1997 wage schedule shall be increased by three percent (3%).
- D) Effective 1/1/98, each member of the bargaining unit shall receive an eight hundred (\$800) Incentive Bonus, which shall not be added to the Schedule A wage schedule.

ISSUE 3 – LONGEVITY (ARTICLE V, SECTION 5)

- A) Effective 1/1/97, each step in the 1996 longevity schedule is increased by one hundred dollars (\$100). Such retroactivity shall be paid within thirty (30) days of this AWARD.
- B) Effective 1/1/98, each step in the new 1997 longevity schedule is increased by one hundred dollars (\$100).

ISSUE 4 – JURY DUTY PAY (NEW)

Effective 1-1-98, the following shall be included in the new Agreement:

- "A. Any police officer, who loses time from his job because of jury duty, as certified by the Clerk of the Court, shall be paid by the City his full daily salary provided he turns over to the City all stipends received for serving on jury duty.
- B. The officer must notify the City or its designee immediately upon receipt of a summons for jury service.
- C. Adequate proof of time served on jury must be timely presented.
- D. All employees shall be absent from work only during the times actually required by the courts. If excused before four (4) hours has elapsed, the officer shall report for regular police duty."

ISSUE 5 – DENTAL INSURANCE (ARTICLE XI, SECTION 5)

- A) Effective 1-1-97, the CITY shall increase its monthly contributions to the CWA, Local 1170 Trust Fund to: Single (\$16.00), Family (\$28.00).
- B) Effective 1-1-98, the CITY shall increase its monthly contributions to: Single (\$17.00), Family (\$30.00).

ISSUE 6 – BEREAVEMENT LEAVE (ARTICLE X, SECTION 1)

Effective 1-1-98, add "step-parents" and "step-children" to definition of immediate family.

ISSUE 7 – TRAINING (ARTICLE XVIII)

Effective 1-1-98, the current language will change to reflect a total of thirty-two (32) hours per officer of paid instructional training required annually. The last twelve (12) hours only will be paid at a time and one-half (1 and ½) rate. Officers will make every reasonable effort to complete this training each year, and the CITY will make every effort to insure full communications and reasonable scheduling of training takes place to encourage maximum participation.

The PBA and CITY will meet promptly and work towards resolving any issue that is not in compliance with the spirit of this AWARD.

ISSUE 8 – BRIEFING PAY (ARTICLE VI, SECTION 3)

Effective 1-1-98, officers must be present at shift briefings to receive briefing pay.

ISSUE 9 – HOLIDAYS (ARTICLE VII, SECTION 2)

Effective 1-1-98, when an officer works on any holiday, they will be paid for that work at straight time, and will also be entitled to an additional compensatory day off.


**ALL OTHER ISSUES AND DEMANDS BROUGHT UP AS PART OF THESE
NEGOTIATIONS ARE HEREBY CONSIDERED NULL AND VOID FOR THE TERM
OF THIS AGREEMENT.**

STATE OF NEW YORK }
COUNTY OF ERIE }

On this 12th day of November 1997, 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.



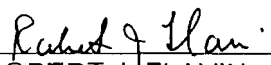
SAMUEL CUGALJ
Public Panel Member and Chairman
Concurs



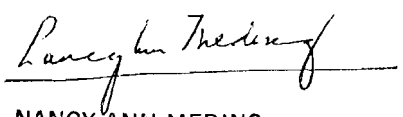
KAREN R. KOVACEVIC
NOTARY PUBLIC, State of New York
Qualified in Erie County
My Commission Expires 8-31-98

STATE OF NEW YORK
COUNTY OF MONROE

On this 6th day of November 1997, before me personally came and appeared Robert J. Flavin, 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.



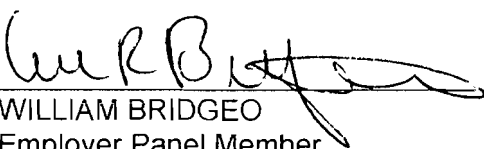
ROBERT J. FLAVIN
Employee Organization Panel Member
Concurs



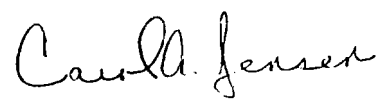
NANCY ANN MEDING
NOTARY PUBLIC, STATE OF NEW YORK
MONROE COUNTY
MY COMMISSION EXPIRES JAN. 31, 1998

STATE OF NEW YORK
COUNTY OF ONTARIO

On this 7th day of November 1997, before me personally came and appeared William Bridgeo, 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.



WILLIAM BRIDGEO
Employer Panel Member
Dissents on Issues 2 and 9



CAROL A. JENSEN
Notary Public State of New York
Ontario County #35-4524183
Commission Expires Aug 31, 1998

CHAIRMAN'S OPINION

In determining the preceding AWARD, the Panel did take into account its statutory responsibilities under Section 209.4 of the Taylor Law. For each issue, the discussion below summarizes the positions of the parties and the Panel's rationale.

ISSUE 1 – TERM OF CONTRACT (Article XXII)

The Panel agreed that a two (2) year agreement would benefit both parties. One (1) year has already passed, and the additional year will give the parties some additional breathing room without an immediate return to the bargaining table. This should reinforce what is understood to be a good working relationship, benefitting the public and all others concerned.

ISSUE 2 – WAGES (Article V, Appendix A)

The PBA sought to freeze entry level salaries for six percent (6%) wage increases in other steps each year, although they have offered several other proposals since. They believe the CITY has become more and more closely tied to Monroe County and the city of Rochester, and their comparable communities include Auburn, Fairport, East Rochester, Gates, Batavia, Ogden and Webster. They point out that Canandaigua is part of the Rochester Standard Metropolitan Statistical Area. Salary comparisons show the CITY is competitive at the entry level, but is approximately \$ 7,400 below the average annual salary of their comparison group at the top police

officer step. They argue the CITY's 1997 budget reflects a four and one-half percent (4.5%) increase and their proposals are within this level. They believe the CITY has the ability to pay their wage demands because: its property tax rate is very low and is almost at full value at \$5.85/\$1,000 of assessed value; it has the eighth (8) lowest tax rate of the sixty-one (61) cities in the state; property taxes have increased moderately about two percent (2%) since 1990; none of the cities with lower tax rates are in the Rochester SMSA; it has minimally used up its constitutional debt limit at 14.7%. Its population is increasing slowly, it enjoys a low unemployment rate, lower than the state; area business and recreational construction are active and are positive indicators for the future.

The CITY offers a two percent (2%) wage improvement in each year. They believe the most comparable units to be the other three (3) bargaining units in the CITY, because of their historical pattern of settlements. While there are minor variations in past settlements, the Firefighters, DPW/Parks, and non-unit CITY employees settled for three percent (3%) wage increases for the time period in question. Their Police Command unit is currently in negotiations. Outside their preferred internal comparisons, the CITY believes its sister city in the county, Geneva, to be the best comparison, followed by Batavia, Cortland, Ithaca, Saratoga Springs. Wage comparisons with Geneva police show that a 2.25% wage increase is needed by the PBA to maintain comparability. They discount the use of Monroe County municipalities because of size and relative economic prosperity those municipalities enjoy. The CITY argues the PBA's comparables too closely reflect larger metro population and crime patterns unlike those in the CITY. The CITY believes the All Cities CPI-U is the more appropriate index to be used, because it reflects the spending habits of eighty percent (80%) of the U.S. population and it has a broader

statistical sampling. From June 1996 through June 1997, the CPI-U (All Cities) increased 2.3%. The CITY's 2% offer will give the PBA a slight increase in real wages. The CITY argues its tax levy has increased almost fourteen percent (14%) and the tax rate increased almost eleven and one-half percent (11.5%) from 1994 through 1997. They counter the PBA's claim that the 1997 budget can support a four and one-half percent (4.5%) wage improvement, pointing out that the budget includes other general personnel costs such as shift differential, briefing pay, step increases, etc. The CITY agrees with the PBA that their wage schedule is competitive at the entry level, but is less competitive at the top level. The former believes the "... budget requirements have significantly out paced property value growth, increasing the burden on taxpayers ...". Exhibits show that from 1994 through 1997, the CITY's total equalized value of taxable property decreased \$1,461,000 (or -3.5%), the tax levy has increased by \$298,000 (or +13.6%), and the tax rate has increased from \$5.25 to \$5.85/\$1,000 (or +11.4%). The CITY's economic situation reflects a small population increase of 3% from the 1990 census, reflecting "... that for more than a decade, good paying jobs have been leaving the state faster than they are replaced ...". The CITY's largest employer, the Veteran's Administration Hospital, reduced its work force by 227 jobs (or 20%). Their statistics show that the CITY and county have generally fared worse than the state per capita earnings.

A Panel majority agreed the CITY has the ability to fund the wage increases recommended herein. Taxpayers benefit from strong administrative and management leadership and performance, e.g., the CITY has the 8th lowest real property tax rate of the state's 61 cities; its debt is modest and is significantly reduced from \$11,748,500 (1990) to \$6,860,000 (1996); its constitutional debt limit (14.7%) is approximately 50% of the 1995 statewide average of 27.3%. They anticipate an increase in its 1997 sales tax revenue because of a favorable business climate

bolstered by lakefront development. The current year's budget, including an unappropriated fund surplus, provides the wherewithal to support the wage recommendations of the Panel majority.

The CITY's objection to the application of a regional CPI index (i.e., Buffalo) may have some merit, but it is certainly preferred to their use of national All-Cities CPI. The latter, with its mix of large cities from different parts of the country, is more inappropriate. The likelihood of regional comparability is more realistic vis-a-vis the likelihood of national comparability. The wage recommendation made herein is within the approximate 2.5% - 3.5% CPI range.

At a minimum, the PBA should receive wage improvements at least equal to its CITY employee counter-parts, who have received 3% wage improvements (the police command unit notwithstanding) for 1997 and 1998. The nature of police work warranted the additional \$800 Incentive Bonus, which will not be reflected in their wage schedule. As discussed in the Training Issue herein, the PBA and the CITY together have forged a highly trained and highly performing police unit. The Council on Law Enforcement Accreditation has designated the CITY's police department as only the seventh (7th) department in the state to earn their accreditation. This professionalism, department morale and subsequent productivity should be even further enhanced by this AWARD, and its reasonableness should be accepted as a necessary cost of police work in the general community.

The Panel discussed comparability a great deal. Internal comparison, with the Firefighters especially, was frequent. Comparisons were more difficult when the Panel looked at external sources, other police departments in nearby municipalities. The lure of municipalities closer to Rochester skew wages higher towards that large metropolitan area, although the CITY is included in Rochester's SMSA. Batavia, Auburn, and Geneva may represent a workable group of comparable municipalities. The Panel could probably agree that the CITY's starting salaries are

very competitive, and become less competitive moving through the 4 step schedule. We could not agree on what it would take to adjust the step levels beyond the starting salary.

ISSUE 3 – LONGEVITY (ARTICLE V, SECTION 5)

The Panel was unanimous on this issue. Internal comparisons show that the Firefighters and Police Command unit received annual longevity improvements of \$75 in their 1995-96 contracts, and the former received an additional \$25 in 1997, and are targeted to receive an additional \$50 in 1998.

ISSUE 4 – JURY DUTY PAY (NEW)

The Panel was unanimous on this issue. This is a new addition to their Agreement brought on by a change in state law whereby police officers can now serve on jury duty. Initially the CITY and PBA had differences, but were able to come to agreement in Executive Session.

ISSUE 5 – DENTAL INSURANCE (ARTICLE XI, SECTION 5)

The Panel was unanimous on this issue. The AWARD modestly increases the CITY's annual contributions by \$18.00 (single) and \$24.00 (family) in the 1st year; and an additional \$12.00 (single) and \$24.00 (family) in the 2nd year.

ISSUE 6 – BEREAVEMENT LEAVE (ARTICLE X, SECTION 1)

The Panel was unanimous on this issue. The addition of step-parent and step-children to this benefit was the proper thing to do and is not anticipated to materially change the cost of this benefit.

ISSUE 7 – TRAINING (ARTICLE XVIII)

The Panel worked very hard to reach unanimity on this issue. Initially, the CITY and PBA had meaningful differences in their approach to training time and officers' participation. The Panel's Employer Representative, on several occasions, expressed the CITY's pride and satisfaction with the department's almost exclusive designation by a state-wide group interested in advancing the professionalism of police officers. The CITY was willing to reduce the present 40 hour annual training time requirement to 32 hours, but wanted to insure maximum participation by requiring officers to forfeit 1 holiday in December if they do not complete training. To its credit, the PBA agreed to maximum participation but preferred to omit the holiday give-back in December fearing an honest problem in the scheduling of training. The parties finally agreed to a strong statement which is outlined in the AWARD. However, both parties are most strongly encouraged to cooperate to insure maximum communication, scheduling and participation. This is one issue the public has a vested interest in.

ISSUE 8 – BRIEFING PAY (ARTICLE VI, SECTION 3)

The Panel was unanimous on this issue. Currently, police officers on each of 3 shifts, report 15 minutes before the start of their shift for briefing. They are paid for this time, and receive an additional 1 and 1/2 straight time hours of briefing pay each week. They also receive this briefing pay when they are on vacation or otherwise not present for any reason. The CITY sought to pay briefing pay only when the officer is actually present. The PBA, forthrightly, approached this situation in a responsible manner, and in Executive Session, agreed to make a unanimous decision.

ISSUE 9 – HOLIDAYS (ARTICLE VII, SECTION 2)

This was another difficult issue for the Panel. After much discussion, a Panel majority believed police officers should receive all holidays in their Agreement and round out this AWARD. Currently, when they work a holiday, they are paid for the day plus they are entitled to another day off, except for the first holiday worked. The exception was the result of a previous contract negotiations, whereby the first holiday became part of an exchange of benefits. The CITY maintained the PBA should be precluded, forever more, from receiving this benefit.

Other issues were presented by both parties and were discussed in Executive Session:
Personal Time, Medical Insurance, Vacation Selection, Shift Change Notification, Sick Leave Buy-Back, Sick Leave Credits to Retirement Account, Sick Leave Buy-Back at Ceasing of Employment,

Part Time Employees, Management Rights, Call Out Pay for Court Time, Evaluations, Health Insurance at Retirement and Equal Treatment Provision. While some of these demands had merit, overall it was inappropriate to include them as part of this AWARD.

The Chair wishes to state that, in his opinion, the Public benefitted greatly from the quality of the representatives involved in this proceeding. Peter Nelson (PBA) and Edward Trevvett (CITY) made thorough presentations of the issues at the Hearing, and submitted meaningful material to support their positions. The Panel members, William Bridgeo (CITY) and Robert Flavin (PBA), had very difficult issues to address as evidenced by the multiple Executive Sessions held. The Chair is particularly grateful for their professionalism and high performance.

November 12, 1997
Buffalo, New York

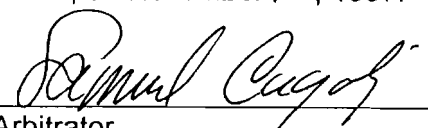


SAMUEL CUGALJ
CHAIRMAN AND PUBLIC PANEL MEMBER

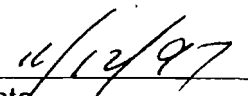
cc: Richard A. Curreri, Director of Conciliation, PERB
Charles Leonard, Supervising Mediator, Buffalo PERB

STATE OF NEW YORK}
COUNTY OF ERIE}

I, Samuel Cugalj, do hereby affirm upon my oath as Arbitrator, that I am the individual described in and who executed the enclosed instrument, as Chairman of the this Interest Arbitration Panel, on November 12, 1997.



Arbitrator



Date