

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

RECEIVED
AUG 16 1985
CONCILIATION

In the Matter of the Interest Arbitration
Between
OGDENSBURG FIREFIGHTERS, LOCAL 1799, IAFF
- and -
CITY OF OGDENSBURG

PERB Case No.
IA84-46;
M84-472;
NB436
AWARD AND
OPINION

Before: The Public Arbitration Panel:

Norman Brand, Public Member and Chairman
Donald Killian, Employee Member
James C. Harberson, Jr., Employer Member

On April 19, 1985, Harold R. Newman, Chairman of the New York State Public Employment Relations Board, appointed us as the Public Arbitration Panel, under Section 209.4 of the Civil Service Law to make "... a just and reasonable determination of the matters in dispute." In accordance with our statutory authority, we conducted a formal hearing on July 1, 1985, at the City Hall in Ogdensburg, New York. We subsequently met on July 9, 1985, in executive session. At the formal hearing both parties appeared through their representatives and had a full and equal opportunity to present documentary and testimonial evidence and to examine and cross-examine witnesses under oath. Both parties presented pre-hearing briefs. No transcript of the proceedings was made. The parties agreed that the Chairman's notes would constitute the record of the hearing.

At the hearing the panel ruled, with the Employee

member dissenting, that the following issues were properly before us:

1. Twenty year retirement plan (Article 16)
2. Salary increase (Article 18a)
3. Two-tiered salary system (Article 18a)
4. Increase in longevity (Article 18b)
5. Change in payment of arbitration fees (Article 22(d)(6))
6. Term of the agreement (Article 24)

The panel confirms that the agreements reach in "Exhibit A" of the Request for Compulsory Interest Arbitration (attached to this award as Exhibit A) together with those terms of the 1983-84 Collective Bargaining Agreement which have not been amended, and the items awarded by the Panel, constitute the new agreement between the parties. In reaching our award we have carefully considered each of the issues in light of the statutory criteria contained in Section 209.4(c)(v) of the Civil Service Law. These criteria are:

The Public Arbitration Panel shall make a just and reasonable determination on 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 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 interest 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. 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, paid time off and job security.

On the basis of our consideration we have reached the following conclusions.

1. Twenty Year Retirement Plan (Article 16)

The expired contract provides for twenty-five year retirement pursuant to Sections 375-c and 384 of the New York State Retirement and Social Security Law. The firefighters' demand is for additional retirement benefits, as embodied in Sections 384-d, 375-g, 375-i, and 302-9-d. In general, the requested benefits provide a twenty year half pay retirement at fifty-five, a twenty year forty percent pay retirement at fifty-five, an increased benefit for employees with over twenty-five years of service, and a more favorable computation of Final Average Salary for Tier 1 members.

(a) Comparability

According to the firefighters' data, thirty-three of the sixty-one cities in New York state have the twenty year retirement plan embodied in Section 384-d for their firefighters. According to the city's data, of the approximately forty cities

which have either per capita income or population which is comparable to Ogdensburg, seventeen have the twenty year retirement plan requested by the firefighters (Exhibit R). After further refining the sample to eliminate fire departments that use any volunteers, that are not "upstate," and that do not have between two hundred and nine hundred incident reports per year, the City asserts that only five of the nineteen remaining cities have the twenty year retirement plan (Exhibit T). The Panel notes that if the city had actually limited itself to those cities which fit these criteria, rather than including all of these cities for which it did not have incident data and those whose incident data fell outside of the stated range, the data would show that four out of eight of the remaining cities have the twenty year retirement plan. The city has agreed to provide the Section 384-d retirement plan to its police officers beginning in 1987.

(b) Interests and Welfare of the Public and the Financial Ability of the Public Employer to Pay

The City asserts that it is not in the interest and welfare of the public to provide a twenty year retirement plan for firefighters since the City has not experienced difficulty in attracting or retaining firefighters. The firefighters note that while this may be true, the Panel should not consider it to the exclusion of other statutory criteria.

The City does not and cannot assert any overall

inability to pay the cost of the Section 384-d plan, which amounts to approximately a 6.2% increase in salary, with the 309(9)(d) plan amounting to almost 3% more. What it does assert is that the retirement demand, when taken together with the firefighters' other demands, represents an inappropriate expenditure of city funds in a year that will inevitably see a large tax increase.

Over the past ten years the City of Ogdensburg has experienced only three property tax increases. At the moment it uses only approximately 61% of its constitutional tax margin. In part, it has been able to maintain its relatively low tax rate and few increases through the gradual elimination of unappropriated general fund balances, tax stabilization reserves, and federal revenue sharing moneys. The financial data show that the City will be obliged to increase taxes to a level which expends approximately 75% of its constitutional tax margin, in order to meet its commitments, including those made to other city employees. Thus, while the City technically has the ability to pay for Section 384-d retirement and 302-9-d in this fiscal year, that expenditure would make it impossible to provide other justified increases without significantly affecting the tax increase which the City will be required to implement.

(c) Peculiarities of Firefighting

As the firefighters pointed out at the hearing, it is generally recognized that firefighting is a hazardous, stressful

occupation. The City noted, however, that the number of reported firefighter injuries and disability retirements has been extremely low, particularly in comparison to the police. While the Panel notes the comparison, it cannot--as the City would have it--draw the conclusion that firefighting in Ogdensburg is a safe occupation. While we sincerely hope that the City's favorable death and disability experience will continue, we are obliged to note that the evidence does not prove that the dangers which inhere in firefighting are absent in Ogdensburg.

(d) Terms of Past Collective Bargaining Agreements

None of the party suggested that there was anything in past collective bargaining agreements which argued for or against the inclusion of a twenty year retirement plan.

Conclusion:

The Panel notes that a twenty year retirement plan for firefighters is not so rare as to require special justification in the case of the Ogdensburg firefighters. On the other hand, it is not so widespread as to make its absence in Ogdensburg a substantial inequity for the firefighters. In comparing the firefighters with their counterparts in the police department we note that while the police will be getting Section 384-d in 1987, it is beyond the power of the Panel to make an award for 1987. Furthermore, the police made certain economic concessions, as will be noted below, which increase the City's ability to pay for the increased cost of retirement. While there is no

justification for immediately awarding a Section 384-d retirement planned firefighters, given its expense and the lack of a concomitant offset, the fact that the City will be providing this plan for police in 1987 will form the inevitable background for the next set of negotiations between the firefighters and the City.

In light of the length of the contract we will impose, and our recognition of both the financial realities of implementing Section 384-d and the appropriateness of providing a twenty year retirement plan for the firefighters, the Panel awards-- effective immediately upon receipt of this Award-- the city will act to make available to firefighters in the bargaining unit the retirement option contained in Section 375-i Retirement and Social Security Law. This section of the law, which will not cost the city anything to implement, provides for twenty year retirement at 40% of a firefighter's Final Average Salary. In recommending it, we recognize the appropriateness of the benefit, the financial needs of the City, and the importance of permitting the parties to negotiate as expensive a benefit as Section 384-d with all of those concerned.

2. Salary Increase (Article 18a)

The union has demanded a twelve and one-half percent increase in salary and increments for each year of a two year contract. The City has proposed a four percent increase for each year of a two year contract.

(a) Comparability

The data provided at the hearing show that the City has given 6% pay increases for 1985 to police (including supervisors) and fire supervisors. Other city employees have received 5.5% for their 1985 contract year. While fire supervisors have only a one year contract, police have a three year contract which includes a second year at 6% and a third year during which there is no pay increase but a twenty year retirement plan (Section 384-d).

The PERB data show that the average negotiated increases for firefighters were 6.36% (U-4) in 1984 and the average arbitrated increases were 6.61% (U-4).

The data on salaries of other firefighters in similarly sized jurisdictions indicate that the Ogdensburg firefighters are not significantly disadvantaged in their salaries so that a "catch-up" raise is needed. On the other hand, their salaries are not so high that a less than average raise is required to bring their salaries more in line with firefighters in like jurisdictions. Thus, the comparability data suggest that the firefighters are entitled to a raise similar to those given other firefighters in like jurisdictions.

(b) Interests and Welfare of the Public and the Financial Ability of the Public Employer to Pay

It is clear that the interests and welfare of the public will be promoted by treating firefighters in a fair and

equitable manner. This can be done by providing firefighters with a raise that is comparable to those given other protective service employees.

The financial data presented by the parties show that the City is quite capable of paying a 6% increase in salary to the firefighters for 1985. Indeed, the increase it voluntarily provided to police officers and fire supervisors, assuming that the City acted in a fiscally responsible manner, shows that the City has the ability to pay a 6% increase in 1985. Moreover, neither the constitutional tax margin nor the City's debt limitations will be impaired by paying a raise of this size.

(c) Peculiarities of Firefighting

Firefighting, like police work, is generally considered to be worth somewhat higher compensation than other forms of municipal public employment. The "protective services" are recognized as being stressful and dangerous.

(d) Terms of Past Collective Bargaining Agreements

In 1983 and 1984 firefighters received 6% increases each year. Both sides presented data to show that either the firefighters had done better than inflation (in the last three years) or worse than inflation (in the last seven years). When correct indices and computations are used, the data show neither. In fact, Ogdensburg firefighters have, in the past, received raises that appear to be highly correlated with the appropriate cost of living index.

Conclusion:

The Panel awards a 6% increase in the salary schedule contained in Article 18a, retroactive to January 1, 1985. The retroactive portion of the increase shall be payable in a lump sum as soon as technically feasible after receipt of this Award.

3. Two-Tiered Salary System (Article 18a)

The City has proposed a two-tiered salary system. Under this system all firefighters hired after January 1, 1985, would receive a starting salary which would be 15% less than the first year salary of the 1984 contract. The City does not propose bringing the new firefighters' salary up to current levels at any time over the period of their employment.

(a) Comparability

The City provided no data on other fire departments which have two-tiered pay scales. Indeed, the City did not assert that any other departments do. On the other hand, the City has negotiated a two-tiered pay scale for police officers. This scale is the same as has been proposed for the firefighters. It should be noted, however, that the two-tiered pay scale was negotiated in a contract which also provides for Section 384-d retirement in its third year.

(b) Interests and Welfare of the Public and the Financial Ability of the Public Employer to Pay

No data were presented at the Panel to show whether it would be of the interest of the public to have a two-tiered

salary schedule in the fire department. Obviously, if the City can afford to pay firefighters at the current schedule, it can afford to pay them less. Thus there is no issue of the City's ability to pay in that sense. Nor did the City present any data to show that it would be unable to maintain the fire department at its current strength if it is forced to pay the salaries it has previously negotiated.

(c) Peculiarities of Firefighting

No evidence was presented to show that the nature of firefighting is related to a two-tiered pay schedule.

(d) Terms of Past Collective Bargaining Agreements

The evidence shows that the City has never before had a two-tiered salary schedule. Thus, there is no historical precedent for it.

Conclusion:

The evidence fails to show any justification, during the period of time for which this Panel will impose a contract, for a two-tiered salary system. We note that the City has negotiated such a system with its police officers as part of a three year agreement which includes the introduction of Section 384-d retirement. Given our award in this case, the parties will be free to negotiate such a system for themselves.

4. Increase in Longevity Payments (Article 18b)

The expired collective bargaining between the parties contains a provision for an additional payment of \$625.00 for

each employee who has "over ten years of longevity with the department." This payment is added to the increment schedule contained in Article 18a. The Union proposes increasing this payment to \$700.00 in the first year of a two year contract and \$750.00 in the second year.

(a) Comparability

The Union provided no data showing the size or timing of longevity payments in other jurisdictions. Moreover, the Union made no showing as to longevity payments enjoyed by other employees of the City of Ogdensburg. The data provided by the City show that police officers do not enjoy any longevity payments (C-3).

(b) Interest and Welfare of the Public and the Financial Ability of the Public Employer to Pay

The Union cited no public purpose that would be served by increasing the longevity payments. While it is clear that the City has the financial ability to pay an additional \$75.00 per firefighter, the appropriateness of such a payment has not been shown.

(c) Peculiarities of Firefighting

No evidence was introduced to show that the peculiarities of firefighting are in any way related to longevity payments.

(d) Terms of Past Collective Bargaining Agreements

In the expired collective bargaining agreement the

firefighters received an increase in their longevity payment from \$600.00 to \$625.00 during the second year of the contract.

Conclusion:

The Panel finds no basis for any increase in the longevity payment during the period for which we make an award.

5. Change in Payments For Arbitrators (Article 22(d)(6))

The expired collective bargaining agreement provides for the parties to split arbitrators' fees and expenses, with the City paying 75% and the Union paying 25%. The City proposes that each side pay 50% of the arbitrators' fees and expenses.

(a) Comparability

It was asserted, without contradiction, that in almost all collective bargaining agreements with municipal employees the parties share the costs of arbitration equally. Furthermore, it was noted that the police contract with the City of Ogdensburg provides for the parties to split arbitrators' fees and expenses equally.

(b) Interest and Welfare of the Public and the Financial Ability of the Public Employer to Pay

No evidence was presented to show that the interests and welfare of the public would be advanced by changing the payments scheme for arbitrations to require each party to pay half of the arbitrators fees and expenses. Nor was it shown that the cost of arbitrations is a significant financial burden on either party.

(c) Peculiarities of Firefighting

No evidence was introduced to show that the peculiarities of firefighting bear any relationship to the provision for paying arbitrators' fees and expenses.

(d) Terms of Past Collective Bargaining Agreements

The expired agreement provides for the City to pay 75% of arbitration fees and expenses. No explanation of that system was provided by the parties.

Conclusion:

An even sharing of arbitrators' fees and expenses is the norm in firefighter contracts throughout the state. There are no special circumstances in Ogdensburg which justify a deviation from that norm. Thus, the Panel awards that the provisions of Article 22(d)(6) shall be changed to provide that each party will pay 50% of the arbitrators' fees and expenses in all future contract arbitrations.

6. Term of the Agreement (Article 24)

The firefighters propose a two year contract. The City proposes a one year contract. The City asserts that a one year contract will enable it to negotiate with both the firefighters and the fire supervisors (who are in a separate bargaining unit) at the same time. This, it asserts, will enable it to make equitable retirement arrangements without providing a non-negotiated benefit for one group.

(a) Comparability

Collective bargaining agreements ranging from one to three years are the norm in jurisdictions throughout the state. The current agreement between the City of Ogdensburg and its police officers (including supervisors) is for three years. The current agreement with fire supervisors is for one year.

(b) Interests and Welfare of the Public and the Financial Ability of the Public Employer to Pay

The public interest is generally best served by longer contracts which provide stability and predictability for budgetary purposes. On the other hand, when similarly situated employees (such as the fire supervisors and the firefighters) are in separate bargaining units it is reasonable to attempt to have contract periods coincide so as to prevent "whipsawing" or "leap-frogging". In this particular instance, the length of the collective bargaining agreement has no impact on the city's financial ability to pay.

(c) Peculiarities of Firefighting

No evidence was introduced to show that the peculiarities of firefighting have any impact on the length of the collective bargaining agreement.

(d) Terms of Past Collective Bargaining Agreements

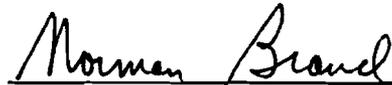
The parties have previously negotiated multi-year agreements. Most of their efforts in this past year were directed at a three year agreement. However, the lack of success in these negotiations is what led to the necessity for this

arbitration panel.

Conclusion:

While the Panel believes that a multi-year agreement is desirable, in this case it is not appropriate. Since the Panel cannot award a three year agreement, similar to the one reached between the City and its police officers, and since a two year agreement might unduly restrict the party's flexibility in negotiating a successor agreement, the Panel has determined that a one year agreement is appropriate. Consequently, the agreement imposed by this Panel will be from January 1, 1985 through December 31, 1985.

Dated: July 30, 1985



Norman Brand
Public Member and Chairman



Donald Killian
Employee Member



James C. Harberson, Jr.
Employer Member

EXHIBIT A

AMENDMENTS AND MODIFICATIONS TO OUR PRESENT CONTRACT
TERMS AND CONDITIONS THAT HAVE BEEN AGREED
UPON BY BOTH PARTIES

1. Article 7- Vacation- Vacation shall be (21) consecutive days, except those employees who have less than 12 months of service shall earn 1.75 days of vacation for each month worked of their complete service. New employees shall select their vacation time, based on their vacation days earned, at the same time all other unit personnel pick their time.

2. Article 8- Sick Leave As a recognition of employees who have accumulated the maximum 2400 sick hours, the City agrees to make cash payments annually for unused sick leave according to the following:

<u>SICK HOURS TAKEN</u>	<u>BONUS HOURS</u>
0	24
1-14	20
15-24	16
25-38	8
Over 38	0

This provision is meant as a supplement to Article 8, section n.

3. Sick Bank For employees who have in excess of 2400 hours sicktime, any sicktime accumulated henceforth by said members will be deposited in a "Sick Bank" for use by said members upon exhaustion of their personal sicktime.

This is also a supplement to Article 8, section n.

4. Sick Leave Amendment to last paragraph of Section 8 as follows:

Should a firefighter die fighting a fire, the additional one time cash payment of 30% of that employees' accumulated sick leave will be paid directly to the next of kin.

5. Article 11 - Amend in Part
Funeral Leave

An employee who wishes to attend the funeral for anyone outside of his immediate family (or brother-in-law or sister-in-law) as defined above will be excused from work without loss of pay for a period not to exceed four hours with the permission of the Duty Officer for a local funeral or one shift for out of town funerals.

6. Article 12- Amend in Part
Out of Title Work

When a firefighter is assigned by competent authority to work out of title at a higher rank than his regular rank for a period equal to or exceeding one shift (either 10 or 14 hours, as the case may be) he shall be compensated for working in that position for the time worked on a per diem basis which shall reflect the difference between his regular salary which he would receive if promoted regularly to the higher title.

7. Article 14- Amend in Part
Emergency Call-In

Persons being called in for non-emergency situations will be paid time and one-half or time and one-half off, at the employees' option if the period is more than one hour.

8. Article 15- Amend in Part
Personal Leave

c) Replace the word Fire Chief with Duty Officer

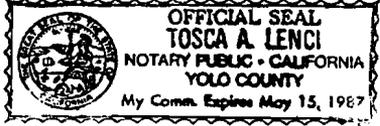
9. Article 21- Amend in Part
Union Business

The City will give release time with pay to officers and delegates designated for Union business, but this shall be limited to a maximum of one person at any one time, for a total of three (3) union-related meetings per year. Loss time not to exceed (4) duty shifts per year.

STATE OF CALIFORNIA)
) ss.:
COUNTY OF YOLO)

On this *9th* day of *August*, 1985, before me personally came and appeared NORMAN BRAND, to me known and known to me to be the individual described in and who executed the foregoing instruments and he acknowledged to me that he executed the same.

Tosca Lenci



STATE OF NEW YORK
COUNTY OF

)
) ss.:
)

On this 21st day of July, 1985, before me personally came and appeared JAMES C. HARBERSON, JR., to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledge to me that he executed the same.

Marlene A. Casey

MARLENE A. CASEY
No. 460 3004
Notary Public, State of New York
Qualified in Westchester County
My Commission Expires March 30, 1986