

NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD  
RECEIVED  
MAY 18 1987

NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD  
-----

In the Matter of the Interest Arbitration :  
: between :  
: THE NIAGARA FALLS FIRE DEPARTMENT :  
: OFFICERS ASSOCIATION :  
: and :  
: THE CITY OF NIAGARA FALLS :  
-----

CONCILIATION

O P I N I O N

A N D

A W A R D

PERB Case #IA86-33; M86-457

INTRODUCTION

This matter was heard and resolved as directed by the State of New York Public Employment Relations Board under the terms of statutory provisions applicable to compulsory interest arbitration pursuant to the provisions of New York Civil Service Law, Section 209.4, and Part 205 of the Rules of Procedure of the New York State Public Employment Relations Board. At issue are the terms of a new collective bargaining agreement (the "Agreement") to be effective as of January 1, 1986 between the Niagara Falls Fire Department Officers Association (the "Association") and the City of Niagara Falls (the "City"). This Agreement is to supercede the previous collective bargaining agreement, as amended, which was in effect until December 31, 1985.

The collective bargaining unit according to the Interest Arbitration Petition consists of officers holding the titles of Captain, Battalion Chief, the Chief of Fire Prevention,

the Master Mechanic-Chief of Apparatus, excluding the Fire Chief and Deputy Chief. Representatives of the parties met numerous times since 1985 in an attempt to negotiate a new agreement. The parties requested and received mediation services from the New York State Public Employment Relations Board. However, no new agreement was reached. On February 27, 1987, a petition for Interest Arbitration was filed with the New York State Public Employment Relations Board (PERB) by the Fire Department Officers Association. The City responded with its Answer to PERB on March 4, 1987. The predecessor agreement expired on December 31, 1985. In response to the petition, PERB on March 13, 1987, designated a Public Arbitration Panel for the purpose of making a just and reasonable determination consistent with the statutory provisions and procedural rules applicable to the Interest Arbitration process.

The designated Panel was constituted as follows:

Douglas J. Bantle, Esq.	Chairperson
David A. Fabrizio	Employer Appointee
Frank Eugeni	Employee Appointee

The arbitration hearing was held on April 3, 1987, at the City of Niagara Falls Convention Center. The parties were offered full opportunity to present evidence and argument and to examine and cross-examine witnesses.

Appearances for the parties follow:

For the Association:

Richard J. Shiah, Vice-President of the Association  
Robert Andrews, Treasurer  
Patrick Gray, Trustee  
Steven A. Walos, Negotiation Team Member

For the City:

Douglas Crowley, Assistant Corporation Counsel  
Lynne McDougall, Director of Personnel  
Robert J. Miller, Deputy Fire Chief  
Carmen T. Morreale, Fire Chief

Prior to the hearing, there was an agreement between the parties to limit the number of items put before the Arbitration Panel. The issues to be presented to the Panel were Salary for 1986 and 1987, Special Duty Pay, Equal Treatment clause, changes in the Grievance Arbitration section, changes in Section 5.6 - Personal Property, and Special Projects. The hearing was completed on April 3, 1987. That same day the Panel met in executive session and held discussions which resulted in the determinations made in this Opinion and Award. Under the statute the Panel is empowered to make a "just and reasonable determination of the matters in dispute." In making that determination the Panel, as well as the parties, took into consideration the following statutory criteria as required by law:

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. the terms of the collective bargaining 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.

#### OPINION

Before beginning the discussion of our decisions, it is important to note for the record that the parties at the hearing stipulated that the Impartial Arbitrator could use the City's earlier presentation concerning the City's financial health in making his determinations in this case. This presentation was made during the "Police Brass" Interest Arbitration hearing held on October 15, 1986. This saved time during this hearing as the information would have been basically the same as presented earlier.

#### 1- SALARY

The main issue in the dispute is the wages to be paid to unit members. The City's position has been that no wage increases were to be given for 1986. It has signed several

agreements with other bargaining units giving a six percent (6%) increase effective January 1, 1987, rolled back to October 1, 1986, for employees on the payroll as of January 1, 1987. This same offer was previously rejected by this unit. The Association is unwilling to take that amount and argues that it should also receive something for 1986. The City's position has been consistent in that no salary increase should be given over and above the amount listed above.

The City's argument is not only the classic unwillingness to pay but also an inability to pay. Documentation was presented at the "Police Brass" hearing arguing that the City has greater financial problems than many other cities its size. City Exhibit #1 from the "Police Brass" presentation shows that its tax base has been shrinking since 1983. Deputy Comptroller Lenhart at that hearing spoke to the issue of the State aid which is needed to pay the lease payments for the Convention Center. She also addressed the issue of challenged assessments by large property holders which could severely affect the City's ability to tax. There are also problems with the Waste Water Plant which will potentially require the City in the future to commit large amounts of tax dollars. The basic problem is that the City must maintain the capital construction projects that it has built through the years with taxation rates based

upon a declining tax base.

The Association makes several arguments concerning ability to pay. (See Association Exhibit #1, Sections A, D, E, and G) First, it argues that many of the problems which the City faces today are because of excessive capital construction expenditures. It contends that these previous mistakes made by the "City Fathers" should not stop the Panel from awarding the unit a fair increase. This Association and other City unions argued from the time such facilities were proposed, that they would constitute an undue burden on the finances of the City, thereby unfairly impacting the employees. They were not listened to and now the Association and other City employees have been asked to "saddle" the burden. The Association argues strongly that this is grossly unfair.

Objective data has also been generated by the Association's fiscal consultant, Edward Fennell, demonstrating that the City does have the ability to pay. (See Association Exhibit #2) His report argues that there is a margin, given the current constitutional real estate tax limit, of over five million dollars (\$5,000,000). He also argues that the City does not have any proximity to its constitutional debt limit, the margin being in excess of ten million dollars (\$10,000,000). Thus, the City has a clearly demonstrated ability to pay.

Fennell, in his report, did concede that the City was under some "fiscal stress". It is obvious to the Impartial Arbitrator after listening to all of the testimony that this City has some very unusual problems which make it not as fiscally healthy as many other New York cities of similar size. If this was the only criteria which the Panel was to base its findings upon, the City's position would clearly be viable. Fortunately, its health since the "Police Brass" Interest Arbitration appears to be improving slightly.

One will note that the statutory criteria clearly indicates that comparisons with similar employees is an important ingredient in a panel's determination. The Association, in a number of exhibits (See Association Exhibit #1- Sections B. and C.) showed that it is somewhat behind other comparable fire "brass" units in a number of areas. The New York State Department of State Office for Local Government Services publishes data referred to as LADS, concerning collective bargaining settlements and interest arbitration awards. One reading the data will note that police units according to the most recently published data generally are somewhat ahead of fire units in the same municipality. City Exhibit #1 indicates that the reverse was true in Niagara Falls through December of 1985 with the Association wages higher than the corresponding positions in the "Police Brass" unit.

The LADS data indicates that negotiated 1986 wage increases were 6.02% for police units and 5.64% for fire units. Arbitrated increases were 6.21% for police units and 5.99% for fire units. This is based upon the latest data available as of June 24, 1986. Please note that the data that the Panel is using here excludes Nassau, Suffolk, Westchester and Rockland Counties and the City of New York.

The Association has also made an issue of the previous arbitration involving the "Police Brass". They argue that they have recently enjoyed parity with that local. Under the Binding Interest Arbitration Award the "Brass" not only received wage increases but a new schedule as well. That schedule gives them approximately seventeen (17) more days off than they received previously. Thus, hourly comparisons (See Association #1, Section B-1) show that the "Police Brass" would enjoy a significant windfall even if the Association members received exactly the same wage increase as the "Police Brass" were awarded.

There were lengthy discussions among the Panel members concerning all of the points above. All of us realized that any award of salary involved subjective balancing of the statutory criteria. The Impartial Member of the Panel is convinced that Niagara Falls is an unusual City with unusual fiscal problems. However, he is convinced in this case as he was in the "Police Brass" case of the merit of a 1986

retroactive wage increase based on two (2) lines of argument; 1) that there has been a relationship between the two units discussed above through years and years of negotiation which would be broken if a similar monetary award was not given and 2) the hard data shows that no 1986 increase would not only put bargaining unit members well behind other comparable units throughout the area and the rest of the State but would also significantly change the units historic relationship with the "Police Brass". The Association at the hearing proposed a six percent (6%) increase for 1986. The Chairman of the Panel believes, given the fiscal condition of the City, that amount is too great. After an extensive review of the data submitted by the parties and more information obtained from the New York State Department of State and the New York State Public Employment Relations Board, the Chairman of the Panel believes that a four percent (4%) increase is proper for this unit for 1986. In addition, this unit should receive the same amount for 1987 as the other city employee units, that being a six percent (6%) increase effective January 1, 1987, rolled back to October 1, 1986, for employees on the payroll as of January 1, 1987. I base this determination on the fact that I believe this unit has shown that it is entitled to comparable treatment with the "Police Brass" in the area of wages. In reality, this unit will "lose some of its higher ground" to the "Police Brass"

as that unit's members clearly have an economic advantage in additional time off. In my earlier "Police Brass" Opinion and Award I indicated that the "Police Brass" were behind this unit and needed some "catch-up". I still believe that to be the case. What this award does, when the additional time received by the "Police Brass" is taken into consideration, is to narrow the gap that existed considerably.

The Employee Representative, of course, is unhappy with this amount. He argues that his unit should not be penalized for its earlier relative bargaining position. He also argued that the "Police Brass" unit had earlier received a one-time \$2500 bonus which his unit members had not received. He believes that fact should be given more weight by the Panel that it has at this time.

The City Representative too would like his position sustained. However, both realize that both parties must be reasonable under the circumstances. Therefore, we have come to an unanimous agreement on the raises listed above. The Award of the Panel is that a four percent (4%) increase be given for calendar year 1986. This amount is to be put into the "schedule" before the adding of the six percent (6%) increase effective January 1, 1987, rolled back to October 1, 1986.

## 2- SPECIAL DUTY PAY

The Association has proposed a change in the formula for

cover losses not covered by insurance. The City wants a change in the language which it believes reduces its liability, "to the maximum of the unit member's insurance deductible", as long as that is not greater than \$750.00.

The Association, of course, would like to maintain the current language as it is feasibly more beneficial to unit members. The Panel has agreed that the City's position on this matter is equitable to both parties. The unit members still will get reimbursed or made "whole" for their losses but the City will receive some minimal protection from possible abuse.

4- GRIEVANCE ARBITRATION LANGUAGE - SECTION 4 D.

The Association proposed a change in the language of the agreement because it has become aware that under the current language it would be very expensive and time consuming to get to grievance arbitration if the City neglected to properly pick its selections from the PERB panels. The current language requires the parties to go to court to obtain an arbitrator if either party fails to select from the panel list. The Association wanted language to simply makes its choice binding on both parties.

The City again was not philosophically opposed to a change from a court action if some other satisfactory way for moving forward could be found. The answer was found by the parties in the PERB Rules and Regulations concerning

payment of what is referred to as "special duty" pay in the collective bargaining agreement. This pay was put into the contract to compensate for the loss in wages for holiday pay periods when an officer would leave the line for an office job. The Association is asking that the current \$1200 amount be changed to six percent (6%) of a comparable Officer's salary. The reason for this is that when this provision was first negotiated about four (4) years ago it was done on the basis of six percent (6%) which then equaled \$1200.

Inflation has decreased the earlier value of that benefit and the Association wants it put into the contract, at the value which maintains what was agreed to earlier, that being a six percent (6%) differential.

The City raised no philosophical objections to this line of argument. It merely relies on its earlier economic arguments. As part of the total economic package the Panel has agreed unanimously to include the six percent (6%) in its Award.

### 3- SECTION 5.6 - PERSONAL PROPERTY

The City has proposed a change in this section of the contract which would eliminate the possibility of "double dipping". Currently a unit member can file with the City for up to \$750 "for property lost, damaged, or stolen from fire halls and parking areas, while members are on duty ..." to

difficult task. I am very pleased that both the Employer and Employee Members join with me in this Award. For clarity we now reiterate the findings of the Panel:

1- SALARY

The Panel awards a four percent (4%) increase, effective January 1, 1987, retroactive to January 1, 1986. In addition, the Panel awards a six percent (6%) increase effective January 1, 1987, rolled back to October 1, 1986. NOTE: The six percent (6%) is added to the schedule after the four percent (4%) increase above.

2- SPECIAL DUTY PAY

The Special Duty Pay provision will be changed from the dollar amount of \$1200 to six percent (6%) of the comparable Officer's salary.

3- SECTION 5.6 - PERSONAL PROPERTY

The Panel unanimously agrees to a change in this section which allows the City to reduce its liability to the maximum of a unit member's insurance deductible not to exceed \$750.

4- GRIEVANCE ARBITRATION - SECTION 4 D

The Panel unanimously agrees to new language concerning what happens if one of the party fails to select his choices from the PERB panel choice list. It substitutes PERB's Rules and Regulations as its contract language instead of forcing the parties to court to resolve the matter.

5- EQUAL TREATMENT CLAUSE AND SPECIAL PROJECTS

The Panel is unanimous in its agreement that these matters will be dropped as part of a total new contract.

Below are affixed the signatures of the Panel members.

  
DOUGLAS J. BANTLE, ESQ.  
CHAIRMAN AND THE PUBLIC  
MEMBER OF THE PANEL

April 17, 1987  
Mendon, New York 14506-0361

grievance arbitration. As a result the parties have agreed to delete the following language of Section 4 D Arbitration:

"In the event of the failure to select said arbitrator either or both of the parties of this agreement may petition a Judge of the Supreme Court of the Eighth Judicial District of the State of New York who shall appoint such arbitrator."

In its place the following language will be added to the Agreement in Section 4 D Arbitration:

"If a party fails to timely return its selections to the Director of Conciliation of the New York State Public Employment Relations Board, all names submitted on the panel list shall be deemed acceptable to such party and the designation of the arbitrator shall be made according to the preferences of the party whose selections have been timely received."

#### 5- EQUAL TREATMENT CLAUSE AND SPECIAL PROJECTS

In the Executive Session both the Employee and Employer Arbitrators agreed to drop these two (2) items as part of an entire package. I agree and therefore we are again unanimous on this part of the Award.

#### AWARD

The Panel is unanimous in this Award. This certainly should not be interpreted as meaning that all members of the Panel agreed on every detail of every section. Both the Employer and Employee Panel members ably represented their respective constituencies. Given the long history of bargaining and the economic position of the City made this a

STATE OF NEW YORK )  
                          ) SS.:  
COUNTY OF MONROE )

I, DOUGLAS J. BANTLE, ESQ., do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument.

April 17, 1987

Douglas J. Bantle, Esq.

Joining with the Public Member of the Panel:

STATE OF NEW YORK )  
                          ) SS.:  
COUNTY OF NIAGARA )

CONCURRING: David A. Fabrizio  
DAVID A. FABRIZIO  
EMPLOYER PANEL MEMBER

Sworn to me before me this 17th day of May, 1987.

Margaret Mary McDonald  
Notary Public

STATE OF NEW YORK )  
                          ) SS.:  
COUNTY OF NIAGARA )

CONCURRING: Frank Eugeny  
FRANK EUGENY  
EMPLOYEE PANEL MEMBER

Sworn to me before me this 17th day of May, 1987.

Margaret Mary McDonald  
Notary Public