

NEW YORK STATE
PUBLIC EMPLOYMENT RELATIONS BOARD

**NYS PUBLIC EMPLOYMENT RELATIONS BOARD
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CONCILIATION**

In the Matter of the Interest Arbitration :
between :
CITY OF NIAGARA FALLS, :
Public Employer, :
and :
NIAGARA FALLS FIRE DEPARTMENT OFFICERS :
ASSOCIATION, :
Employee Organization :
PERB Case No. IA90-006; M89-372 :

AWARD

BEFORE: Jeffrey M. Selchick, Esq.
Public Panel Member and Chairman

David A. Fabrizio, Esq.
Employer Panel Member

Capt. Blair McEvoy
Employee Organization Panel Member

APPEARANCES:

For City of Niagara Falls
Douglas Crowley, Esq.
Deputy Corporation Counsel

For Niagara Falls Fire Department Officers Assn
Wyssling, Schwan & Montgomery
W. James Schwan, Esq., of Counsel

Pursuant to the provisions contained in Section 209.4 of the Civil Service Law, the undersigned Panel was designated by the Chairman of the New York State Public Employment Relations Board, to make a just a reasonable determination of a dispute between the City of Niagara Falls ("City") and the Niagara Falls Fire Department Officers Association ("Association").

The prior Agreement between the parties, which covered the period January 1, 1988 through December 31, 1989 (Joint Exhibit C), expired with the parties at impasse over the terms of a successor agreement. Efforts at mediation did not result in agreement, and by petition dated June 14, 1990 (Joint Exhibit A), the Association filed for Compulsory Interest Arbitration pursuant to Section 209.4 of the Civil Service Law.

Thereafter, the City filed a timely response (Joint Exhibit B) to the Association's petition.

A hearing was conducted before the undersigned Panel on December 7, 1990 in the City of Niagara Falls, at which time both parties were represented by Counsel, submitted numerous exhibits and presented argument on their respective positions.

The Association also filed a post-hearing brief, which was received on January 10, 1991. Thereafter, the Panel also received recently issued Interest Arbitration Awards concerning the Niagara Falls Police Department and the Niagara Falls Captains and Lieutenants of the Police Department.

Set out herein is the Panel's Award as to what constitutes a just and reasonable determination of the parties contract for the period January 1, 1990 through December 31, 1991.

In arriving at such determination, the Panel has considered the following factors, as specified in Section 209.4, Civil Service 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 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.

The undersigned Panel met in Executive Session in Niagara Falls on April 11, 1991. During that session, the Panel members reached unanimous agreement on this Interest Arbitration Award. The positions originally taken by both parties are quite adequately specified in their hearing memoranda, numerous hearing exhibits, and post-hearing briefs, which are all incorporated by reference into this Award.

BACKGROUND

The City of Niagara Falls is situated in Niagara County and has an approximate population of 67,000 people. The City is both the major metropolitan area within Niagara County and an industrial center. Niagara Falls is also a major tourist attraction, and annually attracts millions of visitors. The City also is a major gateway to Canada, and has several important bridges providing access to and from Canada.

The Association is the certified bargaining agent for all persons employed by the City as a uniformed officer of the City's Fire Department, including Captains, Battalion Chiefs, the Chief of Fire Prevention, Master Mechanic-Chief of Apparatus, and Assistant Master Mechanic. The Chief of Fire Prevention and the Master Mechanic-Chief of Apparatus are Battalion Chiefs, and the Assistant Master Mechanic is a Captain. Excluded from the bargaining unit are the Fire Chief and Deputy Chief.

At the time of the hearing in this Interest Arbitration matter, there were eight (8) Battalion Chiefs and forty-two (42) Captains.

Both parties presented this Panel with a substantial record in support of their respective positions and demands. The Association presented significant data as to salaries and benefits received by Fire Battalion Chiefs and Fire Captains in Albany, Buffalo and Rochester, as well as other cities within New York State. The Association also presented exhibits which provided extensive documentation and explanation in support of its demands for new or increased benefits.

Presented by the City was significant data concerning general wage increases and increases in the cost of living index, salary increases and benefits provided to other City employees, as well as specific salaries and benefits paid to Fire Captains and Battalion Chiefs in North Tonawanda, Lockport, Tonawanda, Batavia, Jamestown, Elmira and Troy. The Association also presented data concerning some of the aforementioned cities as being proper comparables.

Considered by this Panel were salaries and benefits received by Fire Officers (sometimes Fire Lieutenants as well as Captains and Battalion Chiefs) in Albany, Buffalo, and Rochester, as well as several of the cities specified by the City as proper comparables. Also considered were salaries and benefits received by members of the Police Department in the City of Niagara Falls, and salaries and benefits received by Police Captains and Lieutenants of the Police Department in the City of Niagara Falls. Finally, the Panel considered the recent negotiated agreement for 1990-91 for the Firefighters employed by the City of Niagara Falls.

It is the view of the Panel that no specific comparable jurisdiction formed the basis for the instant Award; rather, all were considered and compared to the demands of this bargaining unit, and the ability of the City of Niagara Falls to pay those items having financial impact. The Panel believes it has provided a fair and equitable settlement to the members of the Niagara Falls Fire Department Officers Association, and has attempted to provide such members with the same, similar or comparable benefits as provided by the City to the other members of the Fire Department, and as provided by the City to members of the Police Department, and in particular, as provided to Police Captains and Lieutenants of the Niagara Falls Police Department.

The Panel considered all of the outstanding issues presented by each party and after considerable study and discussion, was able to reach a unanimous agreement on those items which will comprise the 1990-91 contract. The Chairman of this Panel commends both David Fabrizio, Esq., and Captain Blair McEvoy, for their professionalism and dedication to reaching a fair and equitable resolution to this impasse.

All demands, proposals and issues not awarded herein are hereby rejected.

The Panel is unanimous in the Award of the following:

TERM OF THE AGREEMENT

The Panel awards a 2 year agreement, to commence January 1, 1990 and continue through December 31, 1991.

SALARY

Effective January 1, 1990, all base pay shall be increased by 6.5%.

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All retroactive salary payments shall be made as expeditiously as possible.

COMPENSATORY TIME

Effective January 1, 1991, eligible officers shall receive one and one-half time (1-1/2) compensation for compensatory time.

For calendar year 1991, eligible officers shall receive money only for compensatory time. Commencing December 31, 1991, and continuing thereafter, eligible officers will receive one and one-half time (1-1/2) compensation for compensatory time earned in either money or time off, subject to the guidelines of the Fire Chief for scheduling such time off.

ANNUAL STIPEND

Pursuant to Section 7.10 of the 1988-89 contract, the Fire Prevention Chief and the Training Officer (Chief) each receive an annual stipend, in recognition of the fact that as office personnel they are not eligible for compensatory time or for shift differential pay. While the 1988-89 contract does not specify such, it appears that the Training Captain, Master Mechanic and Assistant Mechanic, also receive this annual stipend. In such case, it is the intent of this Panel to continue the annual stipend for all officers presently receiving it.

Effective January 1, 1991, the annual stipend paid to officers pursuant to Section 7.10 of the contract shall be \$1500.00.

SHIFT DIFFERENTIAL

Pursuant to Section 7.4 of the 1988-89 contract, uniformed personnel working the 6:00 p.m. to 8:00 a.m. shift receive a shift differential of thirty-five cents (\$0.35) per hour.

Effective January 1, 1991, the shift differential paid under Section 7.4 shall be fifty cents (\$0.50) per hour.

SENIOR CAPTAIN

Pursuant to Section 7.10.3 of the 1988-89 contract, a Captain designated as Officer-in-Charge of a Firehouse by the Fire Chief is compensated an additional \$300.00 for the additional duties and responsibilities.

Effective January 1, 1991, the additional compensation for a Captain designated as Officer-in-Charge shall be \$800.00 per year.

SICK LEAVE BUY-BACK

Effective January 1, 1991, employees entitled to sick leave and who have been in the employ of the City for three (3) or more years, prior to termination of service shall be entitled to compensation equal to the following schedule of their unused sick leave credit upon their termination of service. Upon retirement any days between 1 and 99 will be paid at 20%; for any days over 99 and less than 199, those days will be paid at 40%; and for any days over 199, those days will be paid at 60%.

COURT TIME

There is no provision in the 1988-89 contract which provides for additional compensation when officers are required to appear in Court.

Effective January 1, 1991, when an officer is mandated to appear in Court on his scheduled day-off on behalf of the City, by an order of the Court, Fire Chief, or Police Chief, the City will compensate the officer at the rate of three (3) hours pay at his straight time rate per appearance. If an officer makes a morning and afternoon appearance in a day, he will be paid separately for each appearance, except that the maximum payment will be for two (2) appearances.

CLOTHING ALLOWANCE

Effective January 1, 1991, each officer, except Fire Prevention personnel, shall receive an annual allowance of \$500.00 for the purchase of Nomex.

HOLIDAYS

Section 10.1 of the 1988-89 contract provides for twelve (12) guaranteed holidays with pay, including Election Day.

Effective December 31, 1991, and continuing thereafter, the current holiday observance will be modified to include Martin Luther King Day, and to delete Election Day.

E.M.T. CERTIFICATION

Effective January 1, 1991, a \$350.00 E.M.T. incentive payment shall be made to each officer upon submission to the Fire Chief of initial certification, and recertification as mandated by New York State.

SICK BANK LIFE INSURANCE

Effective January 1, 1991, the City shall apply an amount equal to the premium paid for the employee's life insurance coverage at the time of retirement to the cost of life insurance on a member after retirement as arranged by the City's insurance carrying agent so long as the sick bank is set up to defray such cost and is maintained according to sub-section 10.6.2 of the 1988-89 contract. Any member who has received such benefit shall continue to receive it until death, regardless of whether or not the sick bank is maintained.

HEALTH INSURANCE

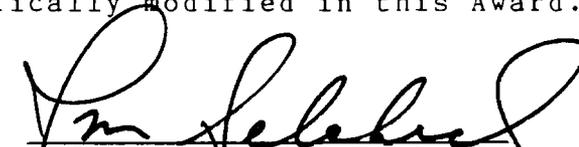
Effective January 1, 1990, any reference to health insurance carrier by name is deleted from the contract. The City does agree however to presently provide a Blue Cross 90/91 Plan as provided to other City employees, as well as the City Dental Plan which is also available to other City employees. The City provides 100% premium payment presently. Any further changes in health insurance carriers shall be by mutual agreement of the parties.

PERSONAL LEAVE

Personal leave entitlement, and use of personal leave, is provided in Section 10.7 of the 1988-89 contract. In addition to the provisions contained therein, effective upon issuance of this Award, personal leave days requested shall be granted on a first come, first serve basis, at the discretion of the Fire Chief, or his designee, based upon prevailing force and workload.

OTHER PROPOSALS

The Panel has made awards on specific proposals as set out supra in this Award. All proposals and arguments made by both parties have been reviewed and considered by the Panel. Any proposals not awarded or discussed in this Award are rejected. All other provisions and language contained in the 1988-89 contract (Joint Exhibit C) are hereby continued, except as specifically modified in this Award.


Jeffrey M. Selchick, Esq.
Public Panel Member & Chairman


David A. Fabrizio, Esq.
Employer Panel Member


Captain Blair McEvoy
Employee Organization Panel Member

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

On this 23rd day of May, 1991, before me personally came and appeared Jeffrey M. Selchick, to me known and known to be the individual described in the foregoing Instrument, and he acknowledged to me that he executed the same.

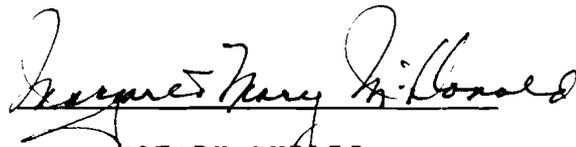
CATHY L. SELCHICK
Notary Public State of New York
No. 4830518
Qualified in Albany County
Commission Expires March 30, 1992



NOTARY PUBLIC

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

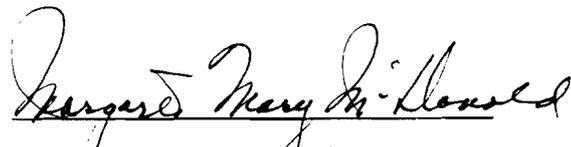
On this 15th day of May, 1991, before me personally came and appeared David A. Fabrizio, to me known and known to be the individual described in the foregoing Instrument, and he acknowledged to me that he executed the same.



NOTARY PUBLIC

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

On this 15th day of May, 1991, before me personally came and appeared Blair McEvoy, to me known and known to be the individual described in the foregoing Instrument, and he acknowledged to me that he executed the same.



NOTARY PUBLIC

*Certificate filed in Niag Co.
Commission expires Feb 1992*