

NYS PUBLIC EMPLOYMENT RELATIONS BOARD  
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CONCILIATION

OPINION

AND

AWARD

PERB Case #IA90-9  
#M90-025

NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of the Interest Arbitration

between the

VILLAGE OF ENDICOTT, NEW YORK  
Public Employer,

-and the-

ENDICOTT PROFESSIONAL FIREFIGHTERS  
ASSOCIATION, LOCAL 1280, IAFF  
Union  
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INTRODUCTION

The present matter before the Panel is an Interest Arbitration between the Village of Endicott, New York and the Endicott Professional Firefighters Association, Local 1280. This procedure was invoked 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 (hereinafter referred to as "PERB"). At issue are the wages to be paid under an existing collective bargaining agreement between the parties. The only issues put before the Panel are because of a wage reopener.

The parties in the Spring of 1990 attempted to negotiate a new wage agreement but were unsuccessful in doing so without third party intervention. A mediator was requested from PERB and mediation was attempted, again without success.

On July 11, 1990, a petition filed by the Firefighters, hereinafter referred to as the "Union", was received by PERB for Interest Arbitration. The Village responded with its Response which was received by PERB on July 17, 1990. In addition to its Response, in December of 1990 the Village filed an Improper Practice charge against the Union.

In response to the Firefighters' petition of July 10, 1990, PERB on August 2, 1990 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.	Chairman and Public Panel Member
Richard E. Thomas	Public Employer Panel Member
David W. Strano	Employee Organization Panel Member

The arbitration hearing was held on February 14, 1991 at the Village's Municipal Building. 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 Firefighters:

Edward J. Fennell, Consultant  
Bill Kenville, Firefighter Witness  
William P. Giblin, Firefighter Witness  
Jeff Winchell, Firefighter Witness

For the Village:

Gary B. Slater, Village Negotiator  
Mary Jane Sedlack, Village Treasurer

There were no limitations put on the parties at the hearing in respect to the scope of the testimony which could be presented to the Arbitration Panel on the disputed issue. At the conclusion of the hearing it was agreed that the parties could submit additional information such as new settlements or interest arbitration decisions to each other while preparing their Closing briefs. Those briefs were to be postmarked to the Panel no later than March 25, 1991.

The Panel met in an executive session on June 4, 1991. That meeting 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 Section 209 of Article 14 of the 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 the 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.

#### OPINION AND AWARD

The Panel has individually and as a group spent a great deal of time examining the evidence that was presented. In the executive session a significant part of the information presented to the Panel was thoroughly discussed. This Opinion will briefly summarize the position of the parties on the open issues. After each parties' contentions are summarized there will be a decision based upon at least a majority of the Panel.

#### CONTENTIONS OF THE UNION ON SALARY

The Union argues that the Village's comparables are not totally appropriate. It contends that Binghamton should also be included when looking at comparable communities in the area. It also argues that the best example to use for comparison is the "Firefighter Fifth Step" position as that is where large numbers of firefighters are on the schedule.

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When one looks at the six (6) cities of Binghamton, Corning, Cortland, Elmira, Ithaca, and Johnson City one finds that the Endicott firefighter is behind an average of 14%. Thus, to just "catch up" to the 1990 figures they must have a very substantial increase.

The representative for the Firefighters, Mr. Fennell, also points out in his brief that the firefighters in Endicott are way behind the police officers in pay. He contends that it would take a raise of 21.5% in the first year and 6% in the second year for them to be at equal levels of compensation. He also argued in the brief that Endicott is not an average community when it comes to pay practices. It is a leader as evidenced by its Police Department payment practices. In addition to being behind the Police Department, Fennell argues that even higher percentage raises would be needed to give firefighters salary levels in line with lineman, meter serviceman, and serviceman in the Village's Light Department. In summary, Fennell argues that an 11% increase in the first year and another 11% in the second year would still leave the Endicott firefighters below average regional firefighters' pay standards, below pay equity with the Village Police Patrolmen, and they would not achieve equity with the Village Light Department.

#### CONTENTIONS OF THE VILLAGE ON SALARY

The first and foremost issue in this case was the proper

salary levels for the members of the bargaining unit. The Village argued that its salary position in respect to other comparable communities was appropriate. In its brief the Village provided the Panel with comparability figures from Corning, Cortland, Elmira, Ithaca, and Johnson City. Mr. Slater alleged that with a 3.5% increase the Endicott bargaining members would be better off than the average obtained from the other five (5) departments for similar positions. Slater also argued that the Consumer Price Index is a relevant factor to be considered by the Panel. He argued that given the increases over the first three (3) years of the current agreement, the Union's requests of an 11% increase for 1990-91 and 1991-92 were inappropriate. He also noted that other Village employee groups in both bargaining and non-bargaining units had received increases which have been six percent (6%) or less.

Slater conceded that although the Village is a fiscally sound entity, it has remained so as a result of prudent and conservative fiscal planning. The Village, he contends, does not have an abundance of money for the settlement for the Firefighters. In summary, Slater argues that the Village's proposed increases of 3.5% are adequate and well supported by the exhibits submitted during the arbitration hearing.

OPINION ON THE SALARY ISSUE

Before beginning the general discussion of the wages I

need to discuss one (1) other issue that was brought up by the Village at the hearing. That is the issue of whether the parties, in an earlier agreement, agreed to essentially abolish the salary schedule and only negotiate wage increases for continuing members of the bargaining unit. The Village Negotiator at the hearing and in his brief strenuously objects to a continued schedule. The Firefighters, on the other hand, have taken the position that during the entire wage negotiations they were always talking about increases on the schedule. The Panel discussed this issue at the beginning of the Executive Session on June 4, 1991. All of us agreed that there was certainly a misunderstanding between the parties on this issue and that the schedule ought to be left intact until the parties formally sit down to negotiate the entire agreement in the future. Therefore, our first ruling is that the schedule will remain intact throughout the two (2) years of the wages decided by this Panel.

As stated earlier, it was evident on the morning of the Executive Session that all of the panel members had taken the time to review the extensive materials presented by the parties. The Panel decided to review the data presented to look for wage trends in comparable communities. The Public Panel member relied on the other members of the Panel as to what communities had traditionally been used in bargaining talks as comparables.

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After some lengthy discussion, it was decided to "knock out" some of the bigger and smaller communities that might skew the data. We decided to focus in on comparables with firefighters in the communities of Elmira and Johnson City. It was also decided that we had to adjust some of the data presented so that we could compare "base" salaries for firefighters, Captains, and Lieutenants. In other words, we wanted to leave out the effects of holiday pay, longevity pay, and other types of pay that could skew our analysis. We also wanted to see if there were really some severe pay distribution problems within the bargaining unit. Through our calculations we found some interesting disparities that neither of the parties had apparently examined before in preparing the case. We basically computed what percentage it would take to get each of the positions up to approximately the average comparable position in Elmira and Johnson City. It must be remembered that we had already decided that these two (2) communities seemed, according to the statutory criteria and the bargaining history of the parties, to be the best "comparables".

Using the computed information generated for each of the examined positions, we then calculated an across the board increase for each of the two (2) years that would essentially have the effect of bringing the positions to the average of those two (2) communities. We believe that these wage

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