

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD
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CONCILIATION

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

Opinion and Award

PERB Case Nos.: IA 93-021;
M93-074

INTRODUCTION

On October 15, 1993 the New York State Public Employment Relations Board, pursuant to Section 209.4 of the New York State Civil Service Law (provisions applicable to compulsory interest arbitration), appointed a Public Interest Arbitration Panel for the purpose of making a just and reasonable determination of the contract negotiation dispute between the City of Niagara Falls, hereinafter referred to as the City, and the Niagara Falls Fire Department Officers Association, hereinafter referred to as the Association.

The Public Interest Arbitration Panel members so designated are:

Dale S. Beach, Public Panel Member and Chairman

Thomas C. Lizardo, Employer Panel Member

William E. Woodcock, Jr., Employee Organization Panel Member.

The arbitration hearing was held on January 25 and 26, 1994 in the Niagara Falls Convention Center. At the hearing both parties were afforded full opportunity to present testimony, exhibits, and arguments in support of their positions and to cross-examine opposing witnesses. Witnesses were sworn. A stenographic record of the testimony was made and the transcript was sent to the City, the Association, and to all Panel Members in mid-February 1994. Both the City and the Association prepared post-hearing briefs which were received by the Arbitration Panel members on or about March 23, 1994.

APPEARANCES

For the Association

W. James Schwan, Esq., Spokesman

Anthony Hynes, Consultant

Duncan T. MacRae, Executive Vice President of New York State

Professional Fire Fighters Association

Simon Zambotti, Captain, Fire Department

John P. Shiah, Captain, Fire Department

Joseph P. Ocejo, Captain, Fire Department

For the City

Richard J. Rotella, Esq., Assistant Corporation Counsel

John L. Gabriele, Fire Chief

Lynne McDougall, Director of Personnel

Our Public Arbitration Panel met in Executive Session at the Convention Center on April 19, 1994. The fourteen issues that have been at impasse have been decided by this Panel and are shown in this report. The actual award for each issue is based upon a majority decision of the Panel members (in some cases a unanimous decision). In the final summary section of this Opinion and Award those members concurring and the individual dissenting are clearly shown for each issue.

STATUTORY CRITERIA

In analyzing the issues and making its determinations this Panel has given consideration to the criteria stated in Section 209.4 (v) of Article 14 of the Civil Service Law (Public Employees' Fair Employment Act). In substance Section 209.4 (v) states that in addition to other relevant factors the Panel shall take into consideration 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) 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.

Section 209.4 (vi) states:

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 agreement 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.

SPECIAL CHARACTER OF THE WORK OF FIRE FIGHTERS AND FIRE FIGHTER OFFICERS

We recognize that the work of fire fighters and their officers is hazardous. Association Exhibit 11 is the "1992 Death and Injury Survey" published by the International Association of Fire Fighters. When comparing data compiled for private industry by the U.S. Bureau of Labor Statistics with its own 1992 survey of deaths and work injuries, the International Association report states that the frequency of fire fighter job related injuries was 4.3 times that of workers in private industry as a whole. Job related fatalities were 2.6 times the rate for private industry.

Association Exhibit 16 is a copy of an article from the American Journal of Industrial Medicine, Vol.11, 1987 entitled "Mortality of a Municipal-Worker Cohort: Fire Fighters." The first two sentences of this article read as follows: "Fire fighting is a physically demanding occupation accompanied by intermittent exposures to a variety of toxic substances including asphxiants such as carbon monoxide and hydrogen cyanide, irritant gases such as hydrogen chloride and nitrogen dioxide, organic vapors, metal fumes, and particulates. The potential chronic effects to fire fighters from these exposures include respiratory disease, cardiovascular disease, and cancer." The article goes on to point out that research investigations

into the long-term health effects of fire fighter work have yielded somewhat inconsistent findings.

BACKGROUND

The bargaining unit contains a total of 47 employees as follows:

Grade 6 = 38 Fire Captains and 1 Assistant Master Mechanic.

Grade 8 = 7 Battalion Fire Chiefs and 1 Master Mechanic.

The 47 employees in this unit represent about 5% of the total Niagara Falls City employees.

A Fire Captain is in charge of a fire company. He supervises the work of all Fire Fighters on an assigned shift from a given fire station, both at the scene of a fire and in the station. A Battalion Fire Chief has the responsibility for directing the extinguishing of fires and for saving life and property in an assigned district. He works under the general supervision of the Fire Chief or Deputy Fire Chief. Fire Captains work under the supervision of Battalion Chiefs.

Many of the Fire Department officer personnel in Niagara Falls are also trained to perform the duties of Emergency Medical Technicians to assist in saving lives.

The Master Mechanic and the Assistant Master Mechanic maintain the fire fighting apparatus.

The collective bargaining agreements between the City and the Association have been on a calendar year basis. The last negotiated agreement was for 1992. It provided for a zero salary increase but it contained an improved retirement plan, 384-e, which is more costly for the City.

In 1992 the Fire Fighters also received a zero salary increase and the 384-e retirement plan. The three United Steelworkers Locals and the one Trades union local all settled for a zero pay increase in 1992.

For 1993 the Steelworkers and the Trades settled with the City for 4% pay increases.

On December 15, 1993 a Public Interest Arbitration Panel, chaired by Douglas Bantle, issued its award for the Niagara Falls Police Club. This award provided for a 4.5% salary increase effective January 1, 1992 and a 4.25% salary increase effective January 1, 1993.

On January 21, 1994 a Public Interest Arbitration Panel, chaired by Samuel Cugalj, issued its award for the Niagara Falls Police Captains and Lieutenants. This award provided for a 4.5% salary increase for 1992 and a 4.25% increase for 1993.

The City's Economic and Financial Situation

The 1990 U.S. Census showed that the population of Niagara Falls was 61,840.

New York State aid to the City has declined from the \$8.2 - \$8.3 million range in the years 1986 through 1990 to \$4.7 million in 1992. This reflects the general pattern of State aid decreases to cities in recent years.

As of October 1993 11.4% of the labor force in Niagara Falls was unemployed. This compared with a rate of 6.3% for the United States as a whole (6.8% seasonally adjusted), 6.1% for Buffalo, and 7.5% for New York State as a whole.

For 1992 real property taxes per capita in Niagara Falls were \$339. This figure was higher than 7 other upstate New York cities. For example, the per capita figure for Albany was \$283, Lockport was \$227, and Buffalo was \$184.

The full value of all taxable real property in Niagara Falls in 1992 was \$1,025,403,000. The full value per capita was \$16,582. This was lower than Albany, Schenectady, Rochester, Syracuse, Lockport, and Troy. Buffalo's full value per capita was \$15,976.

For 1992 Niagara Falls utilized 72% of its constitutional taxing limit. Buffalo utilized 79% of its taxing limit, Rochester utilized 62%, and Schenectady stood at 54%. The other major upstate cities ranged down to Albany at 40%. In 1993 Niagara Falls utilized 69% of its taxing limit.

The present City administration took office on January 1, 1992. It inherited a serious fiscal problem from the previous administration. The prior administration had failed to file financial reports with the State Comptroller for the years 1989 and 1990, as mandated by law.

From January 1, 1992 through the fall of 1992, the most recent City audit available was from the year 1988, which indicated a fund balance of just under \$4.4 million. During the fall of 1992 the audits for the years 1989 and 1990 were completed. The result of these audits indicated a \$7 million fund balance at 1990 year end. In November of 1992 a 1993 fiscal year budget was prepared using \$4.2 million of the expected 1991 fund balance. But in March 1993 a draft 1991 audit became available. This showed that, in fact, the fund balance was just over \$2 million. Thus for fiscal 1993, a deficit of some \$2 million was imminent. Additionally the City overspent significantly on capital projects in 1991 and the years prior to it.

Because of the lack of adequate financial reports the City could not make accurate projections.

THE ISSUES

1. DURATION OF AWARD

The Association proposes an award covering the two years January 1, 1993 through December 31, 1994.

The City proposes that this award cover only the year 1993.

Discussion

Section 209 (vi) of the Public Employees' Fair Employment Act states that the Arbitration Panel can make an award not to exceed two years from the termination date of the previous collective bargaining agreement.

The last agreement expired on December 31, 1992.

When this award is issued four-tenths of the year 1994 will have already passed. Although the City and the Association could possibly bargain a contract for 1994 successfully, given the recent history where all four of the uniformed officer unions have been in compulsory interest arbitration with the City, it appears best to have this award cover both 1993 and 1994. This will avoid the possibility of still another interest arbitration proceeding for the Fire Department Officers and the City for 1994.

Award

This award shall cover the two-year period beginning January 1, 1993 and ending December 31, 1994.

2. SALARY

Position of the Association

The Association proposes that effective January 1, 1993 each bargaining unit member shall receive an 8% salary increase. Effective January 1, 1994 each bargaining unit member shall receive an additional 8% salary increase.

In support of its position the Association has offered into evidence a vast amount of pay comparison data drawn from actual union-employer contracts.

The most meaningful comparisons are those which show total compensation which includes base pay, longevity pay, emergency medical technician pay, holiday pay, sick leave incentive pay, and education incentive pay (but excluding overtime pay which is highly variable).

A very significant table is that contained on page 27 of Association Exhibit 19. This compares total annual compensation of Niagara Falls Fire Captains with Niagara Falls Police Lieutenants. In their 10th service year as of 1991 and 1992 a Police Lieutenant made \$43,621, whereas a Fire Captain made \$41,422 (\$2,199 less). At the 25th service year a Fire Captain made \$2,177 less than a Police Lieutenant. Also Police Lieutenants work 136 straight time hours less per year than do Fire Captains.

Also a comparison of the pay rate per hour worked shows that Fire Captains in Niagara Falls earn an average of \$2.42 per hour less than do Police Lieutenants. This is an average for service years 10 through 25.

The table below shows the total annual compensation of Fire Captains (10th service year) for various cities in upstate New York commencing with the contract dates shown (Association Exhibit 19, page 3):

Albany (1/1/93)	\$49,041
Buffalo (7/1/93)	48,869
Lockport (1/1/93)	44,363
Rochester (7/1/92)	54,362
Schenectady (9/1/93)	45,830
Syracuse (7/1/93)	44,062
Troy (1/1/93)	42,857
Niagara Falls (1/1/91, same for 1992)	41,422

The situation is much the same for Battalion Chiefs. The total annual compensation for Battalion Chiefs in Niagara Falls is substantially lower than the amounts paid in these other cities. It varies from \$1,350 lower than Syracuse at the 15 year service year to \$14,974 lower than Rochester at the 15 year service year.

In summary, for equity and fairness Fire Captains and Battalion Chiefs should receive substantial pay increases.

The Association addresses the ability to pay issue. It shows that the real property tax levies in recent years have been as follows:

<u>Year</u>	<u>Total Levy</u>
1991	\$21,108,000
1992	20,857,000
1993 (budget)	20,885,000
1994 (budget)	20,668,000

The foregoing figures show a slight decline in the property tax levy. Also the tax rates per thousand for both homestead and non-homestead property owners are declining substantially in 1994 compared with the rates for 1993.

The City subsidizes the Convention Center in the amount of \$3,000,000 per year and it subsidizes a free parking ramp garage. The Association questions the wisdom of these two annual expenditures.

Sales tax revenue to the City was \$11,494,817 in 1991, \$13,878,156 in 1992, and \$12.14 million in 1993.

Other comparable cities have had to raise their total property tax levies in recent years to meet increased costs. Yet Niagara Falls has lowered its total levies slightly and has cut the tax rates in the last two years.

In summary the Association claims that the City has the ability to pay the requested salary increase.

Position of the City

The City offers a 3% salary increase for 1993.

The City provides salary comparisons for the following cities for the year 1992: Utica, Schenectady, North Tonawanda, and Lockport. Specifically it has compared the salaries for a Fire Captain with 20 years longevity and a Battalion Fire Chief with 25 years longevity as that is the average in the City of Niagara Falls. In Niagara Falls longevity is built into the base salary.

	<u>Captain</u>	<u>Battalion Chief</u>
Niagara Falls	\$38,122	\$42,824
Utica	37,695*	41,465*
Schenectady	38,206	41,684
North Tonawanda	36,999	41,505
Lockport	37,906	-

The above figures include longevity but not other supplements.

* Utica salaries are for 1991. The 1992 contract is in arbitration.

The foregoing figures show that the salaries for Fire Captains and Battalion Chiefs in Niagara Falls are right in line with the salaries in these other four cities.

The City argues that Buffalo is not a proper city for salary comparison purposes. It is the second largest city in the State. Also the Niagara Falls Fire Department is composed of Fire Fighters, Captains, and Battalion Chiefs. However the Buffalo Fire Department contains Lieutenants, Captains, and Battalion Chiefs. Lieutenants in Buffalo are the first line supervisors as are Captains in Niagara Falls.

The City maintains that Utica and Schenectady are appropriate comparables because they have similar populations, similar size fire departments and a similar mix of business and industry. North Tonawanda and Lockport are very good for salary comparison purposes because they are in Niagara County and have a similar labor pool and job duties.

The City argues that its comparison cities are more relevant than those offered by the Association.

Let us now turn to ability to pay and the interests and welfare of the public. The City asserts that its residents pay the highest taxes in the State and are beset with the highest unemployment rate in the State. Forty percent of the residents receive some type of social services assistance.

The City emphasizes the financial problems that the current administration inherited from the previous administration. In its post-hearing brief the City characterizes the problem as a fiscal meltdown. These problems are discussed in the Background section of this Opinion and Award

so they will not be repeated here. But we shall quote a brief passage from page 2 of the City's post-hearing brief.

"The bottom line is the City was slapped with legal action by the State Attorney General's Office, due to the fact that audits for the years 1989 and 1990 were never submitted by the previous administration. Further, the present administration undertook diligent efforts to put its fiscal house in order, complete audits as required, and ultimately determine that the City may not be able to avoid a year-end deficit for the contract year at issue here. Under the current circumstances, is it proper simply to raise taxes to address this problem?"

Discussion

The two principal criteria that are commonly used to establish pay rates or levels are comparisons with the rates paid for similar jobs in comparable communities and ability of the employer to pay equitable rates.

Association Exhibit 19 contains a table on page 3 giving the total annual compensation of Fire Captains for 1993 for seven cities in upstate New York plus the 1991 and 1992 (same as 1991) rates for Niagara Falls for longevity years 10 through 25. These 7 cities are Albany, Buffalo, Lockport, Rochester, Schenectady, Syracuse, and Troy. The average total compensation for these 7 other cities for longevity years 10-25 is \$47,397. The average for Niagara Falls is \$41,846. Thus Niagara Falls is \$5,551 behind the average.

The survey data for Battalion Fire Chiefs for service years 15-25 for Albany, Buffalo, Lockport, Rochester, Schenectady, and Syracuse shows an average total compensation of \$52,758. The average for Niagara Falls is \$46,769. Thus it is \$5,989 behind the average of these 6 cities.

Even if the figures for Buffalo (a large city) are eliminated, the average annual compensation for service years 10-25 for Fire Captains for the remaining six cities is \$47,103. This is \$5,257 higher than the average for Niagara Falls.

For Battalion Chiefs the average total annual compensation for service years 15 through 25 in Niagara Falls is \$46,769. The average for the five cities of Albany, Lockport, Rochester, Syracuse, and Schenectady (no data for Troy) is \$52,668. Thus Niagara Falls is \$5,899 behind these five cities.

Labor relations professionals can argue vigorously as to whether a particular city is comparable to a given city. Although the City's comparables do not include certain pay items that are contained in the Association's comparables, it is quite reasonable to give serious weight to both the City's and the Association's surveys. Niagara Falls is about \$5,500 - \$6,000 per year behind the average of the other cities in the Association's survey. Even if Buffalo is eliminated from the data, Niagara Falls is about \$5,300 - \$5,900 behind the average of the six other cities. Niagara Falls is about "in-line" in the City's survey of four other cities.

If we weight each survey 50% (or equally) we find that Niagara Falls is about \$2,800 - \$2,900 behind the average of the other cities.

Especially compelling for the Association is the disparity between Police Lieutenants and Fire Captains in Niagara Falls. They both function as front-line supervisors. Yet Police Lieutenants average total compensation for service years 10-25 is \$44,038 and for Fire Captains it is \$41,846. Thus Fire Captains are \$2,192 per year behind Police Lieutenants on the average. This is an inequity.

Let us now look at the interests and welfare of the public and the financial ability of the employer to pay.

The interests and welfare of the public can mean the degree of satisfaction of the residents in Niagara Falls with the quality of fire protection service they are receiving and the cost for that service in taxes. This Panel has no direct information on the residents' feelings about their fire protection. The interests and welfare of the public are commonly tied to the financial ability of the employer to pay.

As stated earlier in this report real property taxes per capita in Niagara Falls in 1992 stood at \$339. This figure is higher than seven other upstate New York cities (Albany, Lockport, Buffalo, Rochester, Schenectady, Syracuse, and Troy). The full value of all taxable real property per capita in Niagara Falls in 1992 was lower than the comparable figures for Albany, Schenectady, Rochester, Syracuse, Lockport and Troy. Only Buffalo had a lower full value per capita.

For 1993 Niagara Falls utilized 69% of its constitutional taxing limit. This figure ranks fairly high among upstate cities. But the City has kept the total tax levy flat for the past several years (with a decline for 1994), while most other communities have raised their property taxes.

On the other hand the total expenditures per capita including debt service and capital outlays for the Niagara Falls Fire Department at \$143 in 1992 ranked very low among upstate cities (Association Exhibit 26, from State Comptroller's Report).

Still another element of the City's ability to pay is the fiscal problem the present City administration inherited from the previous administration.

The prospect of achieving full pay equity for the Fire Department Officers must be tempered by the City's ability to pay.

In view of all the foregoing factual information this Arbitration Panel has determined that starting on January 1, 1993 the salary schedule (Wage Schedule D that was effective 1/1/91 - 12/31/91 and continued through calendar year 1992) shall be increased 4.5%. For example, a Captain at 10 years longevity now is paid \$37,426.68. With a 4.5% pay increase his 1993 salary will be \$39,110.88. Tab D in City Exhibit 1 shows that the total base payroll including longevity for the 47 employees in the Unit was \$1,822,481. Hence the total cost of a 4.5% increase is \$82,012 for a year.

Starting on January 1, 1994 the base salaries including longevity shall be increased 3.0% and starting on July 1, 1994 these salaries shall be increased an additional 2.0%. Thus for the last six months of 1994 the officers shall earn 5% over their 1993 salaries. But the cost to the City over the entire 1994 year will be just 4.0%.

What funds are available to pay for these salary increases? In December 1993 the City Council eliminated all funds for employee pay adjustments that the Mayor had put into the proposed 1994 budget. The Council also eliminated from the Mayor's proposed 1994 budget \$497,000 that is contractually required for vacation cash conversions for the bargaining units.

The Arbitration Panel understands that the 1994 budget contains no hidden amounts to pay for bargaining unit salary increases. It is a tight or "bare bones" budget.

What choices are then available to the City to fund this salary award? It can make substantial, but perhaps painful, reductions in other accounts. It could generate some revenue by charging a fee at its free parking garages. The City could adopt a Bond Resolution (borrow funds) to pay for the salary increase for 1993. To pay for the salary increase for 1994 the City could issue a Budget Note which would have to be paid back out of the succeeding year's budget.

Award

Effective January 1, 1993 the salary schedule (Wage Schedule D in the collective bargaining agreement that was effective 1/1/91 - 12/31/91 and continued through calendar year 1992) shall be increased 4.5%.

Effective January 1, 1994 the salary schedule including longevity shall be increased 3.0% and starting on July 1, 1994 these salaries shall be increased an additional 2.0%.

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

3. PERSONAL LEAVE

Currently Unit employees are eligible to take three personal leave days per year. Also employees may accumulate two unused personal leave days per year to a maximum balance of five days.

The Association wants 12 hours pay for each personal leave day in the employee's personal leave bank, at year's end, over two days.

The City opposes this proposal. To pay 12 hours pay for each personal leave day in the individual's leave bank (over two days) at year end is a perversion of the concept of personal leave.

Award

The Arbitration Panel rejects this Association proposal.

4. BRIEFING TIME PAY

Currently there is no briefing time pay in the contract between the parties.

The Association proposes that Fire Department officers should be required to attend a 15 minute pre-shift briefing and they should be paid at the rate of time and one-half for such briefing. The Association asserts that all City police officers, whether brass or rank and file, get briefing time pay. Also briefing pay would reduce the existing disparity in pay between police brass and fire department brass.

The City opposes briefing time pay. It would automatically build in time and one-half pay on a daily basis. Also the Association offered no proof for its necessity.

Discussion

Because of the cost to the City and because the Association has not demonstrated a clear need for briefing time pay, the Panel does not support this proposal.

Award

The Arbitration Panel rejects the Association proposal for briefing time pay.

5. LONGEVITY PAY

Currently longevity pay is built into the pay schedule.

The Association proposes that effective January 1, 1993 each employee shall receive annually in addition to his salary a longevity payment of .25% for each year of service with the Department. The Association's rationale is that currently City Police Lieutenants receive higher longevity pay than do Fire Captains. Also Police Captains receive more than Battalion Chiefs.

The City opposes the Association proposal as being too costly and because of the compounding effect of the proposal.

Discussion

The Panel recognizes that there is some disparity between the longevity payments for Police Brass and Fire Department Brass. However because of the cost involved in the Association proposal and because of the City's current economic and financial situation, the Panel does not support the Association proposal.

Award

The Arbitration Panel rejects the Association proposal to enhance longevity pay.

6. LUNCH MONEY

Currently the City does not pay lunch money.

The Association advocates that lunch money in the amount of 30 minutes pay for each shift worked be paid to each line officer effective January 1, 1993. Line fire command officers do not receive a duty free lunch period as do staff fire officers.

The City opposes this proposal by claiming that the proposal is just another way of raising the pay rates in addition to the Association's salary proposal.

AWARD

The Arbitration Panel rejects the Association proposal regarding lunch money.

7. BATTALION CHIEFS

The Association proposes that Battalion Chiefs, in addition to the across-the-board increases that might be awarded by the Arbitration Panel, receive an additional 2% across-the-board increase in base pay, effective January 1, 1993. The Association points out that a Battalion Chief has city-wide responsibilities. Also a Battalion Chief, on average, earns \$2,396 less in total annual compensation than a City Police Lieutenant.

The City opposes the proposal to provide Battalion Chiefs an additional 2% in pay.

Award

The Arbitration Panel rejects the Association proposal that Battalion Chief pay be raised an additional 2%.

8. ECONOMIC VALUE OF A DAY

The Association proposes that the economic value of a day be contractually established as 12 hours. Line bargaining unit members work a 4/4 schedule consisting of ten hour days and fourteen hour nights. The average work shift for line officers is, therefore, twelve hours. Holiday pay, personal leave days, compensation days, vacation days, and sick days are paid on the basis of twelve hours. Everything is twelve hours, except for sick leave and personal leave buyout. When an officer retires the City pays out as though he earned only eight hours per month instead

of the 12 hours per month that he earned while working. This is inequitable.

The City opposes this proposal. It is an attempt to increase by a factor of 50% the value of a "day."

Award

The Arbitration Panel rejects the Association proposal regarding the economic value of a day.

9. TRAINING PAY

The Association proposes that each Fire Captain who trains probationary fire fighters shall be paid two additional hours of pay for each day he trains. In support of its position the Association states that not all Captains do training. Those that do train must give probationary fire fighters drills, rate them, and fill out training reports. Also the police officer contract provides for two hours training pay when training is done.

The City opposes training pay. The very nature of an officer is to supervise staff and such supervision contemplates training of subordinates.

Discussion

An important component of the duties of a supervisor is training. It is not something above and beyond the regular work of the supervisor.

Award

The Arbitration Panel rejects the Association proposal regarding training pay.

10. SICK LEAVE INCENTIVE

The Association proposes a sick leave incentive program according to the following schedule:

0 sick leave days	4 days pay (48 hours)
1 sick leave day	3 days pay (36 hours)
2 sick leave days	2 days pay (24 hours)
3 sick leave days	1 days pay (12 hours)

The proposal would serve an incentive not to use sick leave. Of the comparables offered by the Association, three of the comparables have one form of sick leave incentive or another.

The City's position is that sick leave is to be used only when an employee is genuinely ill. Conscientious employees do not require any incentive with respect to the use of sick leave.

Discussion

Sick leave is to be taken when employees are truly sick. Thus there should be no need to pay people not to use sick leave.

Award

The Arbitration Panel rejects the Association proposal regarding sick leave incentive.

11. STANDBY/CALL-IN PAY

The Association proposes that any Unit member who is required to work on a standby or call-in-basis as part of his regular duties shall be compensated an additional 5% of base pay per year. Currently, individuals on a standby/call-in basis are paid an extra \$1,000 per year. The four such individuals are the Chief of Fire Prevention, Training Chief, Master Mechanic, and Assistant Master Mechanic.

The City opposes an increase in standby/call-in pay.

Discussion

The Panel believes that those four employees who are required to be on standby/call-in duty and must stay within pager distance are entitled to a modest increase in pay for this duty.

Award

Increase the annual stipend for standby/call-in duty by \$100 per year (that is from the current \$1,000 per year to \$1,100 per year) effective January 1, 1993.

12. OFFICER-IN-CHARGE

Currently when a Captain is designated as the Officer-in-Charge of a Firehouse by the Fire Chief he is paid an additional \$800 per year for the additional duties and responsibilities. The Association asks that this stipend be increased to \$1,500 per year. Currently there are five designated senior captains or Officers-in-Charge. Officers-in-Charge have control and administrative command of their assigned stations and are responsible for the care and upkeep of all departmental property. They make out requisitions for supplies and repairs. They prepare inventory and other reports. The Association also asks that seniority be considered in making an appointment.

Discussion

A majority of the Panel is persuaded that the Officer-in-Charge of a Firehouse should receive a moderate increase in annual compensation.

Award

Increase the annual stipend for those Officers-in-Charge of a firehouse from the current \$800 per year to \$1,000 per year effective January 1, 1993. The Arbitration Panel does not support the Association's proposal regarding seniority in making appointments.

13. CONVENTIONS

Currently Article 4, Section 4.11 of the expired contract provides that the City grant release time without loss of pay or benefits to at least two members of the Association to attend meetings, seminars, workshops, and conventions of parent organizations up to a maximum of seven days per member per calendar year.

The Association asks that the number of days be increased to 10 days per year. It asserts that fire fighting is becoming more technical, exposure to toxic substances is greater, and regulations are becoming more complex.

The City opposes the Association's proposal. It views some of these meetings and conventions as recreational in nature.

Discussion

Among the meetings that members attend from time to time are safety and health seminars, a legislative conference in Albany, state and national conventions, and district meetings. The Panel is persuaded that members do learn important information by attending such meetings and conventions.

Award

Increase the number of allowed days per year to attend meetings, seminars, and conventions from the current seven (7) to eight (8) for two (2) Association members.

14. E.M.T. - D

Now a \$350 E.M.T. incentive payment is made to each officer upon initial E.M.T. certification and recertification. Once certified an individual must be recertified every three years to maintain his status.

E.M.T. - D stands for Emergency Medical Technician - Defibrillator. Currently 21 Fire Captains are E.M.T.-D certified.

The Association proposes that once an officer is E.M.T.-D certified he would be entitled to a 3% base pay incentive payment each year that he maintains certification. Under current practice, an officer who is E.M.T.-D certified receives the same \$350 stipend that an officer who is only E.M.T. certified receives. E.M.T. certification requires 106.5 hours of instruction. E.M.T.-D certification requires an additional 15 hours of classroom instruction. Also the City recently changed its Civil Service specifications to require E.M.T.-D certification as a minimum qualification for promotion to Fire Captain or Battalion Chief.

The City opposes any supplement for E.M.T.-D certification over the rate for E.M.T. E.M.T.-D certification simply enhances the memberships' job security in the light of a decrease in fire calls.

Discussion

In view of the additional training required for Defibrillator certification and recertification over that for straight E.M.T. certification the Panel is persuaded that some additional pay is reasonable.

Award

Retain the current \$350 stipend for E.M.T. certification and for recertification every three years. Add \$100 per year for E.M.T.-D. These payments shall be made effective January 15, 1993 and effective January 15, 1994 for those possessing E.M.T.-D certification.

LISTING OF FINAL POSITIONS TAKEN BY PANEL MEMBERS ON EACH ISSUE.

1. DURATION OF AWARD
Members Beach and Woodcock concur. Member Lizardo dissents.
2. SALARY
Members Beach and Woodcock concur. Member Lizardo dissents.
3. PERSONAL LEAVE
Members Beach and Lizardo concur. Member Woodcock dissents.
4. BRIEFING TIME PAY
Members Beach and Lizardo concur. Member Woodcock dissents.
5. LONGEVITY PAY
The Panel is unanimous on this issue.
6. LUNCH MONEY
Members Beach and Lizardo concur. Member Woodcock dissents.
7. BATTALION CHIEFS
Members Beach and Lizardo concur. Member Woodcock dissents.
8. ECONOMIC VALUE OF A DAY
Members Beach and Lizardo concur. Member Woodcock dissents.
9. TRAINING PAY
Members Beach and Lizardo concur. Member Woodcock dissents.
10. SICK LEAVE INCENTIVE
Members Beach and Lizardo concur. Member Woodcock dissents.
11. STANDBY/CALL-IN PAY
Members Beach and Woodcock concur. Member Lizardo dissents.

12. OFFICER-IN-CHARGE

Members Beach and Woodcock concur. Member Lizardo dissents.

13. CONVENTIONS

The Panel is unanimous on this issue.

14. E.M.T. - DEFIBRILLATOR

The Panel is unanimous on this issue.

The members of this Public Arbitration Panel, whose names and signatures follow, hereby affirm that we are the individuals who have executed this instrument which is our award.

State of New York SS.:
Albany County

On this 31 day of May 1994, before me personally came and appeared Dale S. Beach to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me he executed the same.

Sworn to before me this
31 day of May 1994

Kimberly J. Howland

KIMBERLY J. HOWLAND
Notary Public, State of New York
Qualified in Schenectady County
Reg. No. 4951081
Commission Expires May 15, 1995

State of New York
Niagara County

On this 16th day of May 1994, before me personally came and appeared William E. Woodcock, Jr. to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me he executed the same.

Sworn to before me this
16th day of May 1994

Nancy Pack

NANCY PACK Reg. No. 4681220
Notary Public, State of New York
Appointed in Niagara County
My Commission Expires March 30, 1996

Dale S. Beach

Dale S. Beach
Public Panel Member
and Chairman

William E. Woodcock, Jr.

William E. Woodcock, Jr.
Employee Organization Panel Member

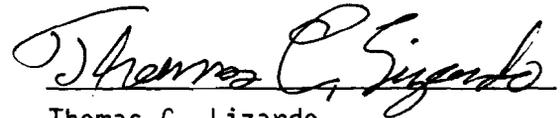
State of New York SS.:
Niagara County

On this *20th* day of May 1994, before me personally came and appeared Thomas C. Lizardo to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me he executed the same.

Sworn to before me this
20th day of May 1994

Nancy Pack

NANCY PACK Reg. No. 4681220
Notary Public, State of New York
Appointed in Niagara County
My Commission Expires March 30, 19 *96*



Thomas C. Lizardo
Employer Panel Member

DISSENT OF THOMAS C. LIZARDO PUBLIC PANEL APPOINTEE TO SALARY AWARD
FOR FIRE BRASS ASSOCIATION MEMBERS

I wish to strongly dissent from that portion of the award relative to salary.

In making the determinations, the Panel, is to take into consideration the following statutory criteria as required by Section 209 of Article 14 of the civil Service Law:

(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 wages, hours and conditions of employment of the employees involved in the 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;

This dissent is based on the fact that on the two key issues of comparability and ability to pay, the Association arguments did not hold sway, and because the opinion rendered reflects certain flaws which do not address this fact.

Comparability

The Association puts forward Albany as a comparable. As the state

capital Albany benefits from a huge influx of dollars provided by the taxpayers of New York State. These are not "social services dollars" but rather dollars which cause increased employment in the capital City. In fact, the Assembly Minority Economic Growth Task Force has recently reported that the "Capital District" (Comprised of Albany, Schenectady and Troy) has created 312,000 private sector jobs over the past decade (1983-1992) for a growth rate 12.8 percent above the national average. This same study shows Niagara Falls 8.7 percent below the national average for the same period.

In fact, Binghamton is the only truly upstate urban area which fairs worse percentage wise than Niagara Falls in this study. Even so, Binghamton is differentiated because on a net basis their job rate, even after these loses, puts them 50% beyond the capacity of Niagara Falls.

For these, and other reasons, Albany, and by extension the Capital District, are not comparable to Niagara Falls in the critically important economic sense which is crucial to this panel's deliberations.

Another "comparable" put forward by the Association is Buffalo. Niagara Falls is, to some degree, a satellite of Buffalo but is by every measure so completely different to call it "comparable" is simply not accurate. The size and population of the City, size and structure of the fire department, living standards and cultural

climate are so different it is obvious from the combined weight of these differences, which far outweigh geographic proximity, that to consider the two "comparable" is a fallacy.

Consider the following. While Niagara Falls has seen continual decreases in state aid (see pg 6 of award) still the State has basically undertaken the process of bailing out Buffalo with large "special aid" checks. In 1992 Buffalo received 65 million in state aid, more than the entire general fund budget for Niagara Falls.

Not to mention that Buffalo is the second largest City in the State and Niagara Falls is not only tenth, but by population is even less similar than even those numbers would suggest. Furthermore, Buffalo size necessitates the relationship which the City has with its school district. Niagara Falls is in an entirely different classification. Has anyone heard of the Niagara Falls Bills? Similar differences exist between Niagara Falls and the City's of Rochester and Syracuse, most particularly in the areas of living standard and economic vitality. As stated earlier, both of these City's have been well ahead of Niagara Falls in private sector job creation over the last decade, for example.

For all of these reasons the City's comparables ring much more true. In fact, Utica is the most comparable City to Niagara Falls demographically, population-wise and economically. These are the true measures of comparability when dealing with economic questions such as wage adjustments. And by comparison, the Niagara Falls

fire brass are more than fairly compensated. This holds true also for Lockport and North Tonawanda. The Association says North Tonawanda should be excluded because the firefighters are largely volunteer, however this just strengthens the City's case. The operational advantages of having professional firefighters are obvious, and this is a clear supervisory advantage as well.

The other issue of "comparability" raised by the fire brass is directed at the pay for police brass in Niagara Falls. Yet while the union claims some historical relationship they freely admit significant differences. Police brass have a schedule advantage while Fire brass are not required to be City residents, police get paid lunch while fire brass do not, yet fire brass receive the benefit of other work rules; and the fire brass had the 384-E benefit in place for the contract year of this decision, the police did not. Thus, to argue for any raise beyond 0% not only calls into question the City's ability to pay but also stretches true "compensation parity" with police beyond the breaking point. Also, as pointed out on during the testimony, fire brass enjoy advantages relative to minimum manning levels and span of control, over and above those for police supervisors.

Ability To Pay

One of the key indicators of what increase a community has the ability to pay is what increase the people of that community are seeing in their own standard of living.

Restated, it is a mere matter of fact, that when the people of the municipality see their own income increase by leaps and bounds they are in a better position to afford increases for the public employees they support through tax dollars, also the ability to pay is thus mitigated when the taxpayers are suffering from a lower standard of living.

In other words, ability to pay is impacted by standard of living. As such, it is, or should be, hard for a community to argue inability to pay a wage increase equal to or lower than the cost of living (unless extenuating circumstances exist), but it should be just as difficult for labor to claim an ability to pay raises which are above the standard of living.

The point is this, in the instant case, the union admits that the City suffers from financial woes as diverse as a projected 1993 budget gap, and, long term payments for unusual expenditures such as parking ramps and a convention center. Yet, the union appeals on grounds of justice and equity that such difficulties "should not bar union members from receiving a fair wage settlement."

But by the same question of equity, one can ask, "on what basis is it fair that the members of certain preferred public employees unions are exempted from economic reality, and on what basis of equity ought these individuals receive more advantageous economic advances than others in the surrounding community?" In short, why

should these individuals see a standard of living increase when others in the community do not?

The Bantle argument in Joint Exhibit #6, which states that the Niagara Falls Police Club did not, in their raise, enjoy a hike in the standard of living, is not creditable.

The fallacy in this argument is instructive in the case at hand, the City of Niagara Falls offered fire brass a 3% increase for 1993. This is an increase above cost of living increases for 1993 and in addition to the costs of their heightened retirement benefits negotiated in 1992. To argue that public safety employees in Niagara Falls are not seeing a living standard increase simply because other (and in the City's opinion non-comparable) cities are more rapidly increasing the living standards of individuals similarly employed is incorrect. Living standard is a simple calculation. If one receives pay raises above Cost of Living Increases, the individual's living standard is increasing, regardless of what pay raises their neighbors or colleagues obtain. Furthermore, the 4.5 percent award for fire brass does more than "close the gap" with police who received a 4.25, 1993 award. Again, this is a mathematical calculation. 4.5 is nearly 106% of 4.25 and as such represents a significantly higher increase, or adjustment, for fire brass, as compared with police. For the second year of this award they will get 5%, as compared with 4.5% for the second year of the recent police award. Thus again, total compensation parity is compromised.

Plus, ability to pay, not unlike comparability, includes a significant economic component, yet this panel seems to down play the critical economic and fiscal factors which effect ability to pay. This is a typical problem with panels such as these although it runs directly contrary to the implied and expressed powers and duties granted in article 14 of Section 209.

The City of Niagara Falls retains the highest unemployment rate, the lowest per capita income and the highest tax rate of the Cities cited by the union (Pgs 11 & 12 of award) as "comparables." Still this is not enough. As stated above, Niagara Falls ranks last economically even amount the "comparables" offered by the union and that must have some impact on the amount "deserved."

Mr. Anthony Hynes, says during his testimony that he sees no correlation between municipal economic decline and excessive taxation, however he does allow that "I can see why a municipality might be hesitant to raise taxes in tough economic times, fearful of further decline."

In saying this Mr. Hynes still misses the obvious. Not only does Niagara Falls have the highest per capita tax burden of the union's own "comparables" but also the highest unemployment rate among those same cities. Not only does this show a correlation between government spending and excessive taxation on one hand and economic decline on the other, it further shows clearly that the City of Niagara Falls has economically a crimped ability to pay even

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beyond a 0% increase. Still, to maintain good faith with the union, the City stuck by its original offer of 3%.

Along with the economic conditions, there is an obvious fiscal inability faced by the City, and Mr Beach mentions the inherited fiscal problems at least three times (pgs 7, 12 and 14 of award).

Yet Mr Hynes suggests that the panel ought to give only small consideration to the City's audited figures for 1992 which show a \$3.6 million dollar deficit for year end 1993. Instead the union points to "similar claims" made in other municipalities.

Comparing claims of municipal officials to an audited financial report is a stretch this panel member cannot engage in, and in fact the City's completed 1993 state report shows a negative fund balance of more than \$3 million.

Mr. Hynes says it is unlikely the City will have anything approaching a three and one half million dollar deficit entering 1994 without offering any evidence. Are we now to accept his judgement over an independent audit?

Mr. Hynes' statement is that the City has not "acted as if this problem exists." Yet Hynes is aware a lay-off was attempted and halted by court decree. He also knows the 1994 budget was intentionally underfunded. The union is aware not only of the City's financial calamity but was asked in mid-1993 to waive vacation sell back rights for 1993 and 1994. They refused. Rather than arguing that responsible action has not been attempted to

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address the City's fiscal problems it is more accurate to say that the union did not cooperate with this action which would insure the long term well-being of the city, and its ability to maintain employment and service levels, including those which effect the fire service, not exclusive of this union's very members.

Hynes' contention that "no action has been taken which would indicate the claimed level of financial strain" is also wrong. More accurately, Hynes simply recommends courses of action which the City Council has chosen to block (parking fees, borrowing, employee layoffs); or the administration has drastically fought to avoid, (property tax hikes) for fear of further deteriorating the underlying City economy. Further Hynes' claim, repeated on page 10 of the award, that the City cut taxes in 1991 is misleading. This chart is not based on budget bases, but on a lower collection rate.

Hynes also claims that the lack of taking his recommendations shows a lack of willingness, rather than a lack of ability, to pay.

While it may be true that certain available actions may have been avoided, those avoidances may later cause an actual inability.

That is the case here. If it is the position of the panel that the city's financial situation reduces its ability to pay it is not relevant that such inability was created willfully, to wit the statute states:

"taking into consideration, ...the financial ability of the public employer to pay;"

The statute does not state:

"the ability to pay is not a consideration or is a mitigated consideration if the City has willfully

reduced said ability."

The point is this, if an individual does not have the willingness to do chin-ups and then cuts off his arms to avoid them, one would still have to say the de-armed person now lacked the ability to do chin-ups, as well as the willingness.

Further on ability to pay, at one point in his testimony Mr. Hynes states that the panel has the ability to "direct the City to re-order its priorities." This is inaccurate and he later admits as much. In fact, this panel can indeed comment on City priorities and does indeed have "awesome authority" as Mr. Hynes has said, to impose an award, and the consequences thereof, upon the taxpayers of Niagara Falls. The point is this, as valid a critique as can be made of City priorities regarding the City's role in convention centers, parking ramps and costly failed "developments" no arbitration panel can legally rule that the City can, for example, choose to waive contractual agreements such as debt service payments or real estate leases. The City has been saddled with bad deals such as the above from 1960 until 1991, the question is this; should property taxpayers be forced to continue to pay for these mistakes, not only directly, but indirectly; by being disallowed to evidence such payments as a hardship upon the City's ability to pay these wages?

Mr. Hynes says these commitments cannot stop the City from paying "fair" wages. Indeed, but the fire service is very well paid by

Niagara Falls standards. They see pay raises and increased pension benefits even as much of the City is unemployed, earning no wages and having no pension. Plus, those few left on the tax roles get stuck with paying for these increasing burdens. At what point do these individuals get fairness based on the effective ability to pay rather than some statutorily supposed ability to pay? Who will arbitrate on their behalf?

All over the nation individuals have taken cuts in pay and benefit packages, but arbitration awards make certain unions exempt from economic reality and from the fiscal problems of their employer.

SUMMARY

Nobody disputes the extremely valuable service which Niagara Falls Fire brass provide, nor the fact that their bravery in the face of very hazardous duty is exceptional. And, no person could criticize them for a lack of dedication to the community. In these areas they do, as a group, excel. Still, I must dissent from the award based on the reasons mentioned above because Niagara Falls taxpayers do not have the effective ability to pay this award. Further, the "comparables" used to come to this award are simply not comparable. In the long haul, compromising the employer will cause fiscal harm to taxpayers, and it will also mean financial harm to the employees, and to public safety in Niagara Falls.



Thomas C. Lizardo, Employer Panel Member