
In the Matter of Interest Arbitration between

THE CITY OF OSWEGO FIREFIGHTERS ASSOCIATION
LOCAL 2707

Petitioner

- and -

THE CITY OF OSWEGO, NEW YORK

Respondent

Opinion and Award

PERB Case No.:
8A93-028;M93-081

NYS PUBLIC EMPLOYMENT RELATIONS BOARD
RECEIVED

OCT 11 1994

Before: The Public Arbitration Panel

CONCILIATION

Sumner Shapiro, Public Member & Chairperson
William E. Crego, Union Designated Panel Member
William M. Wallens, Employer Designated Panel Member

I. INTRODUCTION

This document constitutes the Opinion and Award of a public arbitration panel designated by the New York State Public Employment Relations Board pursuant to Civil Service Law 209.4 on December 9, 1993. The petitioner is the City of Oswego Firefighters Association, Local 2707, hereinafter referred to variously as "the Petitioner", "the Firefighters", "The Union", or "the Employees". The respondent is the City of Oswego, New York, hereinafter referred to variously as "the Respondent", "the City" or "the Employer".

The Petitioner and Respondent were parties to a Collective Bargaining Agreement for the term January 1, 1990 through and including December 31, 1992 and they entered into negotiations over the terms of a successor Agreement on or about November 17, 1992. Following five negotiation sessions, the Employees filed a Declaration of Impasse with the New York State Public Employment Relations Board (PERB) and a Mediator was appointed. The parties

met with the Mediator on August 17, 1993 resolving some further issues but with the impasse persisting about other items. On October 5, 1993 the Union petitioned PERB for compulsory interest arbitration setting forth fourteen (14) unresolved Union proposals and twelve (12) Employer proposals. Pursuant to PERB Rules and Regulations, Section 205.5, the Employer, by its attorneys, Roemer and Featherstonhaugh, P.C., responded on November 3, 1993 essentially concurring in the Petitioners identification of impasse items but asserting that several Union proposals had either been agreed upon or withdrawn and correcting the language in seven (7) City proposals to reflect additions or modifications which had been adopted in the course of negotiations. Prior to the commencement of hearings in this matter, the parties had resolved these differences and settled several other issues and were in agreement about the issues to be resolved by the Panel.

A hearing was held in the conference room of the Captain's Quarters Restaurant in Oswego, New York on March 18, 1994 at which time the parties were afforded unrestricted opportunity to present testimony and documentary evidence, examine and cross examine witnesses and offer arguments in support of their respective positions. Neither party advocate raised any objection to the fairness or completeness of the hearing. The parties by mutual consent, deferred filing of post hearing briefs which were ultimately received on June 3, 1994. The Panel convened in Executive Session at Syracuse, N.Y. on August 19, 1994.

The Public Arbitration Panel was constituted as follows:

Chairperson	Sumner Shapiro 64 Darroch Road Delmar, New York 12054
Union Designated Arbitrator	William E. Crego Safety Consultant Services 144 Niagara Street Oswego, New York 13126
Employer Designated Arbitrator	William M. Wallens, Esq. Roemer & Featherstonhaugh, P.C. 99 Pine Street Capital Center P.O. Box 318 Albany, New York 12201-0318

Pursuant to the Provisions of New York State Civil Service Law, Section 209.4 (vi), a determination of a Public Arbitration Panel shall be for the period prescribed by the Panel but in no event shall exceed two years from the termination date of any previous Collective Bargaining Agreement. However, in the instant matter, both parties have voluntarily empowered the Panel to make a determination for a third contract year and the findings and determinations of the Panel shall therefore be for the period of January 1, 1993 through December 31, 1995. (Appendices I and II, hereto.)

The Panel was charged with making a just and reasonable determination of all issues before it. It is obligated to take into consideration, in addition to any other relevant factors, the following:

a. comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with 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.

Appearances were as follows:

For the Union:

Donald Killian
International Association
of Firefighters
Advocate

Thomas P. Miller
Negotiating Team Member

John F. Sterio
Chairperson
Union Negotiating Committee

Dominick A. Timpano
Secretary Treasurer
New York State Professional
Firefighters, Inc.
AFL-CIO - IAFF

Joseph Perry
Negotiating Team Member

Jeffrey E. Gordon
Negotiating Team Member

Patrick Pelky
President
IAFF
Local 2707

For the Employer:

Elayne G. Gold, Esq.
Roemer & Featherstonhaugh, P.C.
Respondent's Counsel

Liesel Zwickelbauer, Esq.
Roemer & Featherstonhaugh, P.C.

Rita Tickle
Personnel Director
City of Oswego, New York
Witness

James Borden
Chief
Oswego Fire Department
Witness

Paul Miller
Chamberlain
City of Oswego
Witness

The Following Exhibits were received into evidence:¹²

Joint Exhibits:

- J1:** Copy of Collective Bargaining Agreement between the City of Oswego and the City of Oswego Firefighters Association, January 1, 1990 - December 31, 1992 (**The Expired Agreement**).
- J2:** Copy of City of Oswego - Oswego, New York Budget Document and Explanatory Statement. Fiscal year January 1, 1992 to December 31, 1992.
- J3:** Copy of City of Oswego - Oswego, New York Budget Document and Explanatory Statement. Fiscal year January 1, 1993 to December 31, 1993.
- J4:** Copy of City of Oswego - Oswego, New York Budget Document and Explanatory Statement. Fiscal year January 1, 1994 to December 31, 1994.
- J5:** Copy of Collective Bargaining Agreement between City of Oswego and Lake City Police Club - January 1, 1992 - December 31, 1993.
- J6a:** Copy of Oswego Fire Fighters Association Petition to New York State Public Employment Relations Board (PERB) for Compulsory Interest Arbitration between it and the City of Oswego dated October 5, 1993.
- J6b:** Copy of City of Oswego response to petition for Compulsory

J6b: Copy of City of Oswego response to petition for Compulsory Interest Arbitration by Roemer and Featherstonhaugh dated November 3, 1993.

J7: Copy of letter from N.Y.S. and Local Retirement Systems, Albany, N.Y. to Ms. M. Rita Tickle, Personnel Director, City of Oswego, setting forth cost to provide 384-d, (20 year plan) retirement for Oswego Firefighters 3 pages, dated march 3, 1994.;

City Exhibits:

C1: City Proposals and Modifications in Bargaining.

C2: Listing of Courses Offered Oswego Firefighters, Persons Taking Same and Costs in 1993.

C3: Summary of Sick Leave use and accruals, Oswego Fire Department - Calendar 1992.

C4: Summary of Sick Leave use and accruals, Oswego Fire Department - Calendar 1993.

C5: Summary of Sick Leave use and accruals, Oswego Fire Department - January 1, 1994 through February 28, 1994.

C6: Listing of Rosters of Oswego Fire Department. Members, Salaries and Anniversary Dates.

C7: Summary of City of Oswego Health Insurance Monthly Premium Rates for years 1991 through 1994.

C8: Modifications of City Proposal No. 17, in Interest Arbitration, dated March 18, 1994.

C9: City of Oswego - Summary of Certain Financial Data re: 1991, 1992, 1993, 3 pages.

C10: City of Oswego calculation of Constitutional Tax Limit for fiscal year ending December 31, 1994, 4 pages, dated October 21, 1993.

C11: City of Oswego - Health Insurance Fire Fighter Enrollment, 1992, 1993, 1994.

C12: City of Oswego - Summary of Tax Levy, Percentage dedicated to Fire Department, and percent salary increases to City Employees by categories in 1991, 1992, 1993 and 1994.

C13: City of Oswego, Comparability Study, 33 Pages, dated March 18, 1994.

- C14**: Copy of Agreement between City of Cortland, New York and City of Cortland Paid Firefighters Association, January 1, 1991 - December 31, 1993.
- C14a**: City of Cortland Firefighter Salary Levels, January, 1989 - December, 1990.
- C15**: Copy of Agreement between City of Ogdensburg, New York and Local 1799, IAFF, January 1, 1990 through December 31, 1993.
- C16**: Copy of Agreement between Village of Massena, New York and Massena Permanent Fire Fighters - International Association of Fire Fighters, Inc. - Local 2220, June 1, 1992 through May 31, 1995.
- C17**: Copy of Agreement between City of Fulton and the International Association of Firefighters, Local 3063, January 1, 1991 to December 31, 1993.
- C18**: Copy of Agreement between City of Plattsburgh and Plattsburgh Permanent Firemen's Association, Local 2421, July 1, 1992 to December 31, 1993.
- C19**: Copy of Contract between the City of Watertown and Watertown Professional Firefighters Association, Local 191 of the IAFF and NYSFFA, Watertown Federation of Labor, Watertown, New York, July 1, 1990 - June 30, 1993.

Union Exhibits:

- U1**: Employees Interest Arbitration Brief, 14 pages plus 4 exhibits.
- U2**: Copy of Agreement between the City of Elmira, New York and Elmira Professional Fire Fighters Association, Local 709, Elmira, New York, January 1, 1993 - December 31, 1993.
- U3**: Copy of Contract between the City of Watertown and Watertown Professional Firefighters Association, Local 191 of IAFF and NYSFFA, Watertown Federation of Labor, Watertown, New York, July 1, 1993 - June 30, 1996.
- U4**: Copy of Contract between the City of Tonawanda, New York and the Uniformed Professional Firefighters Association, Local 859 IAFF, AFL-CIO Tonawanda, New York, April 1, 1991 through March 31, 1995.
- U5**: Copy of Agreement between the Village of Scarsdale and Uniformed Firefighters Association of Scarsdale, Inc., Local 1394, AFL-CIO, June 1, 1992 - May 31, 1994.

- U6:** Copy of Agreement between the City of Middletown, and the Middletown Professional Firefighters, Assoc., Inc. January 1, 1993 - December 31, 1994.
- U7:** Copy of Agreement between the City of Kingston and Kingston Professional Fire Fighters Association, Local 461, January 1, 1992 thru December 31, 1994.
- U8:** The Interests & Welfare of the Public - Excerpt from Decision of Interest Arbitration Panel, Jeffrey M. Selchick, Esq., Chairperson, City of Buffalo, New York and Buffalo Professional Firefighters Assoc., Local 282, AFL-CIO for years 1990 - 1992, two pages dated December 11, 1991.
- U9:** Copy of Collective Negotiations Agreement by and between the City of Auburn, New York and Auburn Firefighters Association of the IAFF, AFL-CIO, Local 1446, 1990 to July 1, 1993.
- U10:** Copy of Agreement between Incorporated Village of Garden City and Professional Fire Fighters Association of Nassau County, Local 1588 (PFFA), June 1, 1992 through May 31, 1996.

^{1/} Where referenced elsewhere herein - J#,p__, C#,p__, U#,p__ designate Joint, City or Employer, and Union or Employee exhibits and page therein where applicable respectively.

II. POSITIONS OF THE PARTIES AND OPINIONS

1. Article 11 of Expired Agreement - Professional Training and Improvement Courses.

A. Firefighter's Position

The Firefighters petitioned for the inclusion in the successor Agreement of a provision 11.2 which would consist of the five provisions of Appendix F of the Expired Agreement stipulating as follows:

1. Compensatory time off will be given for approved optional fire training courses that require the use of an individual's personal time.

2. For each full day attended at an approved school, participating fire fighters will receive one full day or night in return for time spent at school and in transit. Compensatory time off for schools that require less than a full day will be prorated on an hourly basis.

3. As with mandatory courses, individuals attending approved courses will be compensated for gas and mileage at the standard rate when use of a private vehicle is necessary.

4. Compensatory time off will be allowed at the discretion of the officer in charge and only when it will not under man the shift being worked.

5. Once granted compensatory time off, an individual will not be subject to call back.

The Union further proposes that Provision 2 of the Expired Agreement be modified to provide compensatory time off at a rate of time and one-half, rather than at straight time as in the past. The petitioner argues that all other compensatory time off is at one and one-half times the personal time expended and that it seeks consistency here.

B. City Position

The City does not oppose the inclusion of the provisions of Appendix F of the Expired Agreement in the body of the successor Agreement but it contests the proposal to provide compensatory time on a time and one-half basis. It asserts that these courses are taken

voluntarily and that they typically do not exceed eight hours in duration. The established compensatory time off arrangement excuses the Firefighter from duty on either a ten or fourteen hour shift which, in the Employer's view, is already reasonable and equitable.

C. Panel Opinion

A Panel majority finds the City argument to be persuasive. The Firefighters are already receiving an average of twelve hours off for a typical eight hour course, which is in fact the equivalent of time and one-half. Therefore, the award will deny the Union proposal to amend the provisions of Appendix F of the Expired Agreement.

2. Article 17 of Expired Agreement - Sick Leave

A. Firefighter's Position

The Union proposes addition of an Article 17.1.2 which would state as follows:

If an employee uses no sick time during the year, such employee will receive four (4) bonus days off next year. If one (1) sick day is used, two (2) bonus days will be given. If two (2) sick days are used, one (1) bonus day will be given.

The Employees argue that the proposed provision would provide an incentive for perfect attendance implicitly suggesting that it would contribute to cost reductions.

B. Employer Position

The Employer vigorously opposes this proposal on the basis that it would add to rather than reduce costs. Relying upon the data in C4, the City determines that such a provision, had it been in effect in 1993, would have increased payroll costs by \$8448, or nominally one-third of 1% of payroll.

C. Panel Opinion

The Panel discussion of this issue is integrated into the discussion of the City proposal relating to Article 17.10 of the Expired Agreement immediately following.

3. Article 17.10 of Expired Agreement - Sick Leave

A. City Position

The City proposes to amend Article 17.10 of the Expired Agreement which states:

17.10 The City will pay for all unused accumulated sick days to a maximum of one hundred sixty-five (165) days when an employee retires at pay rate in effect at that time.

The proposed amendment would state as follows:

17.10 Employees on the payroll as of January 1, 1994 with more than 165 days of accumulated sick leave shall be able to maintain their current accumulations but may not accrue any additional days; however, if these accumulations fall below 165 days, the employee may be permitted to accumulate up to a maximum of 165 days of sick leave.

All employees on the payroll as of January 1, 1994 who have fewer than 165 days of accumulated sick leave and all newly hired employees shall only be

permitted to accumulate up to a maximum of 165 days of sick leave.

The Employer emphasizes that it pays out up to 165 days of sick leave at 100% of current pay at the time of retirement. Its Personnel Director testified that it has in the past encountered problems with employees who have accumulated more than 165 days and when they approached retirement, would call in "sick" frequently, seemingly to consume the excess over 165 days. In some other cases, the witness testified that persons with more than 165 days would transfer excess time to other City employees further exacerbating the City's costs. While the Employer conceded that Firefighters had not abused sick leave in the manner detailed, it urged that the provision is common to other groups of City employees and that it wishes to abate the problems there and to forestall possible future problems in the Fire Department.

B. Union Position

The Union argues that there is no record of abuse by the Firefighters and that there was only one isolated incident of transferring sick leave credits and that involved a person who worked in another City department. It cites C3, C4 and C5 as evidence in support of its assertion that sick time abuse is not present in the Fire Department. The Firefighters have utilized this benefit responsibly and the Union, predicting little likelihood

of change, argues there is no reason for eliminating this provision at this time.

C. Opinion

Sick leave, while commonly and understandably grouped with other classes of paid non-work time, such as holidays and personal days, is truly more closely related to health insurance. It is provided so that employees who are temporarily incapacitated from working may treat with their illnesses without loss of pay for some period of time. It is a form of insurance in which the Employer is self insured and in which the premiums are deposited in allowable or earned sick leave days, which in this case amount to 12 per year. While the Employer is not self insured, it similarly provides insurance for medical costs under the health insurance provisions of the Agreement where the premiums are paid directly in cash. The essence of insurance is that it spreads risks over a broad base. Just as it is understood and expected that some, and hopefully most, individuals will incur no or small medical costs while an unfortunate few will require extensive and costly treatment, it is expected that most individuals will require little or no sick leave time probably over extensive periods. Others, and hopefully few, may be stricken with serious illnesses or even dread diseases which will necessitate the use of many sick leave days. The insurance plans do not anticipate that

every covered employee who enjoys good health and makes no claim upon the health insurance policy will be paid a bonus for not doing so. The enjoyment of good health happens to be a priceless inherent reward in itself. It is, of course, apparent that an individual does not make a claim on the health insurance policy simply because he or she was not ill. This logic, we believe, should apply to sick leave as well. The Employees should only make a claim on sick leave when absence due to illness is unavoidable and should not expect a bonus because he or she by good fortune enjoyed consistently robust health.

The Union position, in its bonus proposal, is in conflict with its position and the record it cites in response to the City proposal for a cap on accumulated sick leave. Firstly, if there is no record of abuse or forecast of such arising, there is no need for a perfect attendance incentive. Secondly, if the Employer is faced with a prospect of likely abuse, and any use of sick leave when it is not required does, in our view, constitutes abuse, the opposition to the City's proposed 165 day cap is unsustainable.

We, on the other hand, find that the record supports the claim of non-abuse by Firefighters. Moreover, we do not find a provision for transfer in Article 17 of the Expired Agreement nor do we find elsewhere in the Agreement any provision which would prohibit the Employer

from exercising its disciplinary powers in the face of fraud or abuse. The Panel will therefore deny both the Union proposal to add an Article 17.1.2 to the Agreement and the Employer's proposal to amend Article 17.1.0 of the Expired Agreement. The award will direct the parties to carry forward into the successor Agreement Article 17, Sick Leave, of the Expired Agreement without modification.

4. Article 23 of Expired Agreement - Overtime and Emergencies

The preamble paragraph of Article 23 of the Expired Agreement states:

Any Firefighter required to work over his/her scheduled shift, recalled to duty for any emergency declared by the Mayor, Fire Chief, or the Officer in charge or is recalled to bring a scheduled shift up to the required manpower because of sickness or other reasons or is scheduled to work a City recognized holiday, will receive 1-1/2 his/her hourly rate at a minimum of four (4) hours pay.

A. City Position

The Employer is concerned about the "hold-over" aspects of this provision. "Hold-over" involves requiring an employee to remain on duty after the conclusion of his or her scheduled shift to maintain manning at the required strength. The Fire Chief's testimony was that on the average the "hold-over" is 15 to 20 minutes and that the City has not required employees to stay on duty for four hours even though it was compelled to pay for them. Oswego proposes reducing

the "hold-over" pay allowance to a minimum of two (2) hours.

B. Union Position

The Union does not challenge the Fire Chief's testimony relating to this issue and has offered no cogent argument to the contrary.

C. Opinion

The Panel finds the Employer's position to be reasonable and the award will sustain the Employer's proposal relating to this item. The Panel will therefore award a revision in the language of Article 23 of the Expired Agreement to state instead of "... a minimum of four (4) hours pay."

"... a minimum of two (2) hours pay."

5. Article 21 of the Expired Agreement - Insurance

A. City Position

Article 21.1, Medical Insurance, of the Expired Agreement in relevant part states as follows:

The cost of the health insurance shall be as follows: The City shall pay the full cost of the health insurance benefits for each employee. Employees in the bargaining unit selecting a family plan, shall contribute a percentage of the difference between individual health and dental insurance and family health and dental insurance as follows:

Effective January 1, 1992, employees shall contribute 10%.

The City cites practice in other jurisdictions noting that 57 Oswego Firefighters utilize this costly

benefit. It seeks an added 5% in the sharing contribution toward family coverage arguing that it will help to maintain the high level of benefits currently provided.

B. Union Position

The Union opposes the proposal on the basis that its members have been in the forefront relative to other City employees in increasing co-pay contributions having paid 10% since January of 1992. At that point in time, it argues that the Oswego Police Department was paying only 7%.

C. Opinion

Union members are the beneficiaries of good health insurance protection at a not unreasonable cost sharing level relative to comparable jurisdictions. The Employer's proposal is for a modest increase which will cost subscribers to family coverage a bit less than \$200 per annum at the present time. This sum amounts to less than 1% of the lowest pay levels and would provide the City with a savings of nominally \$11,000 per annum in its Fire Department Budget. Increased health insurance contributions are generally in the offing and within the context of the general economic package which will be awarded in this proceeding, we believe the Employer's proposal should be granted. Therefore the award will

provide for an amendment to Article 21.1 of the Expired Agreement stating:

Effective January 1, 1995, employees shall contribute 15%.

6. Article 18 of Expired Agreement, Holidays; Article 25.1 of Expired Agreement, Uniform Allowance; Article 17.3 of Expired Agreement, Sick Leave; and Article 19.2 of Expired Agreement, Vacation Leave.

A. City Position

This City proposal was initially introduced as proposals numbered 20 and 27 in the Bargaining Agenda with the Firefighters. The proposal is to deprive employees on Disability Leave, pursuant to the provisions of 207-a of the General Municipal Law, (GML) of added sick leave accruals, holiday leave, vacation leave accruals, sick leave accruals and/or personal leave entitlements while on 207-a leave. The Employer further proposes to reduce clothing allowance on a prorated basis while permitting the employee to retain any monies paid to be used toward future clothing allowances. Upon return from 207-a leave, the Employee would again commence to accrue leave time credits in all the suspended categories. The City maintains case law, as well as the testimony of Fire Chief Borden, interprets GML 207-a as prohibiting the payments of fringe benefits to those on leave pursuant to the statutory mandate. The City acknowledges that contracts cited from comparable

jurisdictions were generally silent concerning the status of fringe benefit payments to persons on GML 207-a leave.

B. Union Position

The Union argues that it is unfair arbitrarily to reduce a member's benefit where that member is on leave resulting from a line of duty or job related injury. It acknowledges that holiday pay at least is not required by law but argues that it has not been shown that the law prohibits such payments. Moreover, it emphasizes that this particular benefit has been enjoyed by all bargaining unit members, including those on 207-a leave, since an arbitration award in 1983.

In addressing the remaining fringes which would be affected under the City's proposal, the Firefighters respond that the Chairperson in the course of the hearing recommended that the issue be revisited and further negotiated.

C. Opinion

The Panel Chairperson did remand this issue to the parties for further negotiation in the course of the Arbitration Hearing with the understanding that the Panel would consider and rule on the issue in the event resolution was not achieved. That was in fact the case and the Employer in its closing brief, proposes the following language be added to the Agreement.

Employees on leave pursuant to General Municipal Law 207-a will retain all leave credits accrued prior to being placed on such leave status. Employees on 207-a leave will not continue to accrue holiday leave credits.

207-a employees shall not continue to accrue vacation leave, sick leave or personal leave from the day they commence such 207-a leave and will receive any clothing allowance on a prorated basis. If clothing allowance has already been paid, the employee will be permitted to use that money toward clothing.

If an employee returns from 207-a leave, the employee will again accrue leave time/credits respectively.

The Panel remanded this issue to the parties for further negotiation since their respective arguments indicated they were only narrowly separated on most aspects of the proposal with the salient point of division being the time frame for implementing the suspension on earning credits. In view of the parties' inability to resolve the matter, we have resumed jurisdiction and independently evaluated their respective positions.

Article 18, Holidays, is, in our view, meaningfully distinguishable in philosophy and practice from the language in other clauses relating to vacations, sick leave, personal leave and uniform allowances. The distinguishing characteristic is that holidays are not intended or anticipated to interrupt the member's work schedule. If the Employee does not work on a designated

holiday, it is because the occurrence of that holiday coincides with the occurrence of his or her otherwise scheduled non-work day. If the Firefighter is on the payroll at the commencement of the work year and does not retire in the course of that year, he or she is entitled to pay for twelve holidays. If the holiday happens not to coincide with a scheduled day off, as is most frequently the case, the Employee receives overtime pay for work performed on the holiday. We are constrained to conclude therefore that holiday pay has in fact functionally constituted a part of the Firefighters salary. The award will therefore deny the Employer's proposal relating to the treatment of holiday pay for persons on 207-a leave.

The proposal relating to vacation accruals, sick leave accruals and personal leave accruals are categorically distinguishable as it is anticipated that these will be actual non-work periods for which pay is forthcoming on the basis that it was previously earned during working periods. The point of division between the parties on these aspects of the City's proposal was that the proposal did not distinguish between long term and short time 207-a leaves. There was, for example, no effective opposition to the thesis that an employee hypothetically on 207-a leave for more than a year, in which status that individual would necessarily be

receiving full time pay, should properly also be entitled to claim duplicate pay for vacation weeks during which he or she would not otherwise have reported for duty in any case.

; In addressing this aspect of the impasse, the Panel has struck a compromise between the positions of the parties and the award will provide for the addition to the Agreement of a new Article stating as follows:

The other provisions of this Agreement relating to sick leave accruals (Article 17.3,a) vacation leave (Article 19.2) and personal leave (Article 16.1) and uniform allowance (Article 25.1) notwithstanding employees on 207-a GML leave for more than nine calendar months shall not continue to accrue vacation leave, sick leave or personal leave and will receive any clothing allowance on a prorated basis. If clothing allowance has already been paid, the employee will be permitted to use that money toward clothing.

Employees in GML 207-a leave status shall retain all leave credits accrued up to and including the first nine calendar months in such status and upon return to work will again accrue leave time and credits prospectively and prorated uniform allowances reduced by any overpayments received at the inception of the 207-a leave. Persons who do not return to active duty may retain any overpayment.

7. Article 26.1 of Expired Agreement, New York State Retirement, Article 21.2 of Expired Agreement, Medical Insurance Upon Retirement and Appendix E of Expired Agreement, Salaries.

A. Union Position

We have combined for consideration and discussion the three interrelated Union proposals as captioned immediately above. The Union is seeking implementation

of the New York State Retirement Plan known as 384-d (20 year retirement) as an upgrading of the existing plan which requires 25 years of service for eligibility to a full retirement benefit. In conjunction with this, it seeks modification of Article 21.2, which is concerned with medical insurance upon retirement, under which the Employer has been obligated to pay 75% of the medical insurance premium for a retiree and spouse for as long as one or the other lives if the individual retires with at least 20 but less than 25 years of service. Employees who retired with 25 years of service or more received fully paid health insurance coverage for themselves and spouses as a lifetime benefit under the Expired Agreement. The Union proposes that full payment entitlement should be forthcoming at the 20 year service level along with implementation of the 384d retirement benefit which would define 20 years of service as a full career expectation.

The Union further proposes an "across the board" salary increase of 7% per year for calendar year 1993 and 1994 respectively. It made no formal proposal for calendar year 1995 as the Panel's empowerment to make a determination for that year as well, was forthcoming only after the conclusion of the hearing and formal submissions.

The bases for the Union positions are extensively discussed in the Panel's opinions which follow. Briefly, the demand for the 384d 20 year retirement plan is based on the assertion that it is a benefit enjoyed by most New York State Firefighters and by virtually all working in comparable jurisdictions.

The salary proposal is based first on a claim that the purchasing power of bargaining unit members has been eroding and that the Union seeks "only to protect our purchasing power." The Firefighters argue that they receive no compensation for being on 24 hour standby duty and that they are, in fact, "... poorly paid in comparison with other New York State Fire Departments, or even skilled labor in the immediate area, even though the Federal Department of Labor considers us to be definitely in the skilled labor category ..." The Employees further assert that they are "... downgraded when compared with other emergency services which are of no greater benefit to the community, to say the least; and the fact that our lives are regulated to a far greater degree than others."

The Union, in its briefs and arguments, responds extensively to Employer claims that it is constrained by limits on its ability to pay with the charge that the City has been motivated more by the lack of a desire than inability to pay. It notes that the City has allocated monies which could be used elsewhere to implementing

advanced payments on the Employees retirement benefits and admonishes the Board to consider that the Taylor Law charges it with assessing not the Employer's willingness to pay but rather the "financial ability of the public employer to pay". The Union especially emphasizes its view of the appropriate interpretation of the Law's language requiring it to consider "the interest and welfare of the public" citing the decision of a Panel Chaired by Jeffrey M. Selchick, U8. That Panel explored the Employer's obligation to balance its priorities to ensure that public safety and fair compensation to those employees who risk their lives in providing it receive priority over less essential programs where resources are inadequate to the funding of both.

B. Employer's Position

Oswego contends that it is in fact attempting to operate under severe financial constraints. Its State Revenue Sharing entitlements have continually declined since 1991, C9, when it was first reduced from an expected \$1.6 million, C2, to \$1 million, C9, J3. The City has received essentially the same reduced amount in both 1992 and 1993. Its tax rate, on the other hand, has been shown to have increased from essentially \$119 per thousand in 1991 to nominally \$130 per thousand in 1992, C9, to nominally \$193 per thousand in 1993, C9, and to nominally \$210 per thousand in 1994, C9. The City pleads

that its revenues have been relatively stagnant since 1991 while salary and health insurance costs and other costs of running government have risen steadily. The City Chamberlain offered testimony to the effect that the City has been searching for financing mechanisms to address its increasing economic burdens but that it continues to be faced with problems which arise out of the presence within its jurisdiction of a large number of tax exempt properties and the inclusion among its residents of many senior citizens whose properties are taxed at a lower rate. The Employer does concede that it is currently taxing at only 69% to 70% of its constitutionally permissible tax limit and acknowledges that it could raise an additional \$8.6 million through taxes but in doing so would be compelled to raise the tax rate to nominally \$302 per thousand, which would impose a severe hardship upon its residents.

The Employer opposes the adoption of the 384d 20 year retirement program and any concomitant increase in the percentage of post retirement health care costs to be paid by the employer on the basis of cost. "The City does not contest that many other jurisdictions in the State of New York often plan 384d to their Firefighters." However, it notes, J7, that the cost to the City of providing this benefit at this time would add approximately 1.5% to the payroll and that that amount is

likely to rise with the passage of time reaching 9.9% and 9% for employees in Tier 1 and Tier 2 respectively in 1995. In response to the Union's salary demands, the Employees offer as a counter proposal a wage freeze in 1993 followed by a 3% across the board increase for the calendar year of 1994. It maintains these salaries are consistent or superior to those being paid Firefighters in comparable jurisdictions, C13, and it in general maintains those jurisdictions cited by the Union in support of its proposal where higher wages are in effect, not comparable. The Employer, like the Union, offered no proposal for a third year in the course of the hearing.

C. Opinion

a. Ability to Pay and the Interest and Welfare of the Public.

We address at the outset the Panel's obligations under Civil Service Law, Section 209.4(v)(b) to consider the interests and welfare of the public and the financial ability of the public employer to pay. We believe opponents of extensive government involvement, perhaps including even those who would resurrect the corvee, recognize that providing for public safety is a primary and preeminent responsibility of government. Citizens commonly and rightfully expect government to recruit, train and employ

public servants to subordinate their own personal safety and well being to that of the public they serve. Firefighting is dangerous work which demands of its practitioners physical stamina, specialized knowledge, courage and commitment. This has been both explicitly and implicitly recognized by the Legislature in promulgating Section 209.4 of the New York Civil Service Law which singles out public safety workers in entitling them to invoke compulsory interest arbitration to resolve impasses. We fully support the philosophy cited in U8 which held that Firefighters are entitled to just and comparable compensation even where the funding of that compensation requires relegating non-public safety programs within the jurisdiction to a secondary priority.

In dealing with the primary priority, we are however constrained to weigh the financial ability of the employer to pay even after relegating non-public safety programs to a lower priority. However, the ability to pay criterion in practice truly refers to inability to pay. This is an aspect which the Panel can only responsibly consider once it has determined the structure of an equitable award based on the other criteria set

forth in Section 209.4, namely, a comparison of wages, hours and conditions of employment with those prevailing in comparable jurisdictions or similar employment, consideration of the peculiarities of the job relative to other trades or professions with specific focus on hazards, physical qualifications, educational qualifications, mental qualifications and job training and skills and finally, the terms and conditions of employment in past collective bargaining Agreements between the parties. These are all subjects which the Union in particular has explored in depth and we turn first to an assessment of its claims and proofs.

b. The "Cost of Living" Argument

The Union, in search of its professed goal of attempting only to protect purchasing power, relies heavily upon changes in the consumer price index which it refers to as the cost of living from 1989 through 1993 in any year in which the percent pay increase was less than the increase in the consumer price index, the Firefighters calculated a theoretical loss in purchasing power based upon the Oswego Firefighter entry level pay of \$24,331. Thus, in 1989 it shows a "cost of living increase" of 5.9% and a pay increase of 5% leading to a net

loss of 0.9%, or \$232. In any year when the "cost of living" increase was lower than the percentage pay increase, the difference was again multiplied by the present entry level Oswego Fire Department salary. Thus for the year 1991, the Firefighters report a "cost of living" increase of 3.50% and a wage increase of 6% yielding a positive difference of 2.5% which equates to \$791 per annum at the entry level salary. The net total of gains and losses as calculated by the Firefighters was a loss of \$956 per annum at the entry level salary and would, as the Firefighters note, be proportionately greater as one progressed upward toward the maximum salary level.

We are impressed with the Union's sincerity and diligence and its efforts objectively to assess its salary experience in formulating a proposal. We do however find some miscalculations and misimpressions to be in evidence and believe that an explanatory exercise falling somewhere between pedantry and pedagogy is appropriate. Firstly, while we appreciate the reasons for the Union adopting the rather common practice in labor negotiations of equating the cost of living and the consumer price index (CPI), it is worth noting that the two terms are not, in fact, synonymous. The

CPI is a measure of the average change in prices over time in a fixed market basket of goods and services. It is calculated monthly for U.S. cities for two different groups, namely, all urban consumers, who account for about 80% of the total population, and for urban wage earners and clerical workers which includes nominally a third of the total population. The market baskets for each of these groups include food, clothing, shelter, fuel, transportation fares, physicians and dentist's services, medicine and other goods and services that people pay for in the course of day-to-day living. The difference between the urban consumer index, known as CPI-U, and the urban wage earners and clerical workers, known as CPI-W, is in the weighting of various items. The two indices are based on 1982/84 prices but their values are different because of differences in the make up of the two market baskets. Thus, in May, 1994 the CPI-U was at 147.5 while the CPI-W was at 144.9. A year earlier, in May of 1993, they were at 144.2 and 142.1 respectively. Thus, over the one year period, the CPI-U had increased by $(147.5 \text{ divided by } 144.2)$ or 2.29% and the CPI-W over that same period had increased by $(144.9 \text{ divided by } 141.9)$ or 2.1%. Thus, the CPI for the urban consumer group

had increased by nominally 0.2% more than the increase for the urban wage earners over the same period of time. The Department of Labor, Bureau of Labor Statistics, which publishes the consumer price indices, also publishes, as the Union notes, regional indices, one such region being the northeast urban where the index is calculated for three different size market areas, A, B and C, at population levels of 1,200,000, 500,000, 2,200,000 and 50,000 to 500,000 respectively. The BLS also publishes indices for specific standard statistical areas, such as Buffalo-Niagara Falls, New York, providing a more parochial indication of changes in the consumer price index. However, the regional and standard statistical market area reports are based on fewer and less frequent observations than the U.S. city average and tend to be more variable in the short run.

Movements in the CPI do provide a measure of inflation but do not necessarily measure changes in the cost of living. There are a number of items affecting living costs which are not included in or measured by the consumer price index. Direct taxes and bank interest, to the extent that they do not affect the price of products or services purchased, being two obvious examples. Another significant

contributor to variations is items included in the index which the individual does not purchase or does not purchase in the percentage the item represents in the calculation of the CPI. In this case, the cost of health insurance and medical care is particularly relevant. Panel Table I sets forth the change in CPI-U for the period January, 1993 to January, 1994. During that period, the consumer price index for CPI-U rose by 2.5%. However, the medical care costs, which is included in that index to the extent of a nominally 7%, rose by 5.1%. The calculation of the table shows that if medical care were excluded, the index for that period would have risen by only about 2.15%. The significance of this calculation is that an urban consumer whose medical costs were largely covered by insurance provided as a fringe benefit, would have experienced an index increase of only about 2.15% rather than 2.5% if he or she conformed to average in every other respect. Other common deviations are attributable to variations in housing costs and the frequency of home purchases. In recent years, the market basket has been altered to include a

PANEL TABLE I

OSWEGO FF/CITY OF OSWEGO

CPI-U CHANGE ^{1/}
 January, 1993 - January, 1994

<u>CATEGORY</u>	<u>% WEIGHT</u>	<u>% CHANGE</u>
All Items	100	2.5
Medical Care	7.108	5.1

Medical care as % of total - $(0.051) \times (0.07108) = 0.00363 = 0.363\%$

All items except medical care $2.5 - 0.363 = 2.14\%$

^{1/} BLS U index is for all urban consumers

rent of shelter cost and owners equivalent rental cost to correct a past distortion attributable to an overweighting of new housing costs. Further distortions may be noted in passing is attributable to the fact that the market basket is fixed whereas purchasing practices vary. If beef prices rise, people may eat more fish or pork, which one may argue affects the quality of life along with the cost of living. But in any event, it undeniably creates distortions between changes in the consumer price index and changes in living costs. In recent history, increases in the CPI have tended to overstate the degree of increase in the actual cost of living.

We have recalculated the Union chart appearing on Page 12 of its brief wherein it determined that an Oswego Firefighter at the entry level salary has

sustained a loss of approximately \$956 per annum over the past five years as a result of the failure of salary increases to keep pace with the consumer price index increases. The Panel calculations in Panel Table II below and it indicates that the Oswego Firefighter did not, as alleged, sustain a loss of \$956 per annum, but rather enjoyed a gain of \$644 per annum, or 2.65% of the 1992 entry level salary. The dollar value would of course be greater than \$644 per annum as one progresses up the salary schedule approximating \$1,000 per annum at the 20 year service level.

PANEL TABLE II

OSWEGO FF/CITY OF OSWEGO

UNION BRIEF - PAGE 12
CPI(W) CHANGES vs. SALARY CHANGES
RECALCULATION OF UNION CHART
EMPLOYING CORRECT CPI INDICES^u

<u>YEAR</u>	<u>A</u> <u>SALARY</u>	<u>B</u> <u>CPI INCREASE</u>	<u>C</u> <u>% PAY INCREASE</u>	<u>D</u> <u>% DIFFERENCE</u> <u>C - B</u>	<u>E</u> <u>ANNUAL GAIN</u> <u>OR (LOSS)</u> <u>D x A</u>
1988	19455				
1989	20424	4.8	5	0.2	\$ 38.91
1990	21654	5.2	6	0.8	\$ 163.39
1991	22953	4.1	6	1.9	\$ 411.42
1992	24331	2.9	6	3.1	\$ 711.54
1993	24331	2.8	0	-2.8	<u>\$ (681.26)</u>
				Total	\$ 644.00

Gain as a % of 24,331 - 644/24331 = 2.65%

^u Based on CPI-W, U.S. City Average - all items U.S. Department of Labor, Bureau of Labor Statistics

c. Comparisons with Skilled Trades

The Firefighters cite local building trade salaries ranging from nominally \$36,000 per annum to as high as \$61,000 per annum as comparable references. These salaries were arrived at by multiplying the respective hourly rates for those trades by 2,080 hours. The source of the hourly rates is not shown but it appears that the Union was relying upon wage rates applicable to work performed pursuant to the provisions of the Davis Bacon Federal Contracts Act, which wages tend to be higher than average. Secondly, a characteristic of the building trades employment is that it tends to be casual where individuals commonly do not work 52 weeks per year. In that sense, it seems inappropriate to equate the earnings in such trades to a salary such as is received by the Firefighters. Most important, however, is the fact that differences between the Oswego Firefighters compensation and the earnings of building trades workers have existed historically and it is the changes in those wages rather than their absolute values which is of possible significance in the present proceeding. We have abstracted from the BLS Average Hours and Employment Earnings Reports, the data appearing in Panel Table III.

PANEL TABLE III

BLS AVERAGE HOURS AND EARNINGS
 EMPLOYMENT EARNINGS ²
 U.S. DEPARTMENT OF LABOR
 BUREAU OF LABOR STATISTICS

TRADE	'91 Average		'92 Average ¹			'93 Average				April '94				
	Hr.\$	Wk.\$	Hr.\$	%Pr. Yr.	Wk.\$	%Pr. Yr.	Hr.\$	%Pr. Yr.	Wk.\$	%Pr. Yr.	Hr.\$	%Pr. Yr.	Wk.\$	%Pr. Yr.
Plumbing, Htg & AC	14.73	567	14.83	+0.6	574	+1.2	15.08	+1.7	587	+2.3	15.17	+0.6	575	-2.0
Carpenters	14.32	500	14.48	+1.1	508	+1.6	14.39	-0.6	512	+0.8	14.66	+1.9	515	+0.6
Electrical Workers	15.33	596	15.42	+0.6	598	+0.3	15.85	+2.8	621	+3.4	15.95	+0.6	628	+1.1
Residential Building Construction	12.24	445	12.45	+1.7	456	+2.3	12.63	+1.5	467	+2.4	12.90	+2.1	481	+3.0

¹ Series Change reported monthly only
 Weekly rounded to nearest \$

² Northeastern U.S. Data

The hourly rate percent increase per year has clearly been very nominal and in the case of Carpenters, actually fell by nominally one-half of one percent in 1993. This possibly reflects a variation in the balance between higher and lower paid people in the category. The weekly earnings of Carpenters however increased by nearly a percent indicating that slightly more hours were worked at slightly lower wages than prevailed in the preceding year. Panel Table IV merely abstracts the percentage data from Table III and shows a calculation of annualized earnings equivalent to 52 times the average weekly earnings for each of the

**B.L.S. AVERAGE HOURS AND EARNINGS
EMPLOYMENT EARNINGS
N.E. U.S. TRADES**

<u>TRADE</u>	<u>% INCREASES</u>					
	<u>1992</u>		<u>1993</u>		<u>1994 THROUGH APRIL</u>	
	<u>HOURLY</u>	<u>WEEKLY</u>	<u>HOURLY</u>	<u>WEEKLY</u>	<u>HOURLY</u>	<u>WEEKLY</u>
Plumbing/Htng. & A.C.	0.6	1.2	1.7	2.3	0.6	-2.0
Carpentry	1.1	1.6	-0.6	0.8	1.9	0.6
Electrical	0.6	0.3	2.8	3.4	0.6	1.1
Residential Building Construction	1.7	2.3	1.5	2.4	2.1	3.0

ANNUALIZED EARNINGS - \$^{1/2}
(52 X Average Weekly Earnings)

<u>TRADE</u>	<u>1992</u>	<u>1993</u>	<u>1994</u>
Plumbing/Htng. & A.C.	\$29,848	\$30,524	\$29,900
Carpentry	26,416	26,124	26,780
Electrical	31,096	32,292	32,656
Residential Building Construction	23,712	24,284	25,012

^{1/2} Earnings are affected by hours worked. See City Exhibit P.7 for Oswego Firefighter data (1992 - min. 24,331 - max. 31,380)

trades in each of the years. These differ somewhat from those estimated in the Union brief and, incidentally, compare more favorably with those of Oswego Firefighters. Trade annual income will be higher by the amount of augmentation from Unemployment Benefits.

Included in the Union listing with which we are here immediately concerned is the entry level

of the Oswego City Police. While there is no history of parity between the two public safety services, the changes in ratios of salaries in comparable positions in the two services is of interest. A comparison of the Lake City Police salaries for the 1993 calendar year (J5) with those proposed by the City for the Firefighters, i.e., retention of the '92 salary schedule (J1) indicates the compensation differences which prevailed between the parties in 1991 would be enlarged by approximately 3%. The Panel finds this to be significant and has considered it along with other potential cost items in formulating a determination for calendar 1993.

d. Comparable Community Practices

Both parties have submitted contracts which each considers to be representative of practice in a comparable jurisdiction. The Panel has tabulated these along with some relevant statistical data in Panel Table V and V-A.

PANEL TABLE V
OSWEGO FF/CITY OF OSWEGO
DATA ON COMPARABLES

JURISDICTION	1989	UNION	CITED BY			POPULATION Ms	COUNTY	COUNTY	MID-SELLING PRICE/HOME 1991 ³
	FAMILY INCOME \$s ^{1/}		CITY	PANEL	1990/PC INCOME ^{2/}				
Auburn	28982	x			o	81	Cayuga	14899	55 m
Cortland City	31760			x	o	20	Cortland	14164	63.5m
Elmira City	24567	x			o	35	Chemung	15885	49.9m
Fulton City	30546			x	o	13	Oswego	14834	56.0m
Garden City Vil	85634	x			o	22	Nassau	31679	180 m
Kingston City	35086	x			o	27	Ulster	18824	103.5m
Massena Vil	29250			x	o	11	St.Law.	12704	35 m
Middletown City	35472	x			o	22	Orange	19788	125 m
Ogdensburgh City	29441			x	o	13	St.Law.	12704	35 m
Oswego City	33184	x			o	20	Oswego	14834	56 m
Plattsburgh City	32840			x	o	21	Clinton	13692	65.4m
Scarsdale T&V	134860	x			o	17	Westchest.	33330	255 m
Tonawanda City	34372	x			o	18	Erie	18305	77 m
Watertown City	28552	x		x	o	28	Jefferson	15205	54 m

^{1/} Panel Table V-A

^{2/} U.S. Dept. Commerce, Bureau of Economic Analysis
Material Compiled by NY State Dept. Economic Development
1993 NY State Statistics/Year Book
18th Edition
Nelson A. Rockefeller Institute
State University of New York

^{3/} NY State Board of Equalization and Assessment
1993 NY State Statistical Year Book
op. cit

PANEL TABLE V-A

INCOME AND POVERTY STATUS ^u
 1990 CENSUS
 1989 \$'s

<u>JURISDICTION</u>	<u>HOUSEHOLD</u>	<u>FAMILY</u>	<u>NON-FAMILY HOUSEHOLDS</u>	<u>PER CAPITA</u>
Auburn	22,271	28,982	12,103	10,638
Cortland City	22,550	31,760	12,154	10,033
Elmira City	18,548	24,567	11,030	9,489
Fulton City	22,955	30,546	11,511	11,331
Garden City Village	74,478	85,634	33,629	33,204
Kingston City	29,133	35,086	18,446	14,341
Massena Village	22,333	29,250	9,273	11,558
Middletown City	30,194	35,472	18,511	13,525
Ogdensburg City	23,394	29,441	12,691	11,213
Plattsburgh City	22,691	32,840	13,956	11,814
Scarsdale Twn & Vill	120,825	134,860	41,386	59,068
Tonawanda City	29,483	34,372	12,860	12,651
Watertown City	22,765	28,522	13,214	11,616

^u 1990 Census
 Summary Social, Economic and Housing Characteristics, New York, U.S.
 Department of Commerce, Economic and Statistics Administration, Bureau of
 Census

We have included in the tabulation data on family income, population, county per capita income and mid selling prices of homes in the counties which is indicative of property values and relative affluence. Since no two communities are precise matches, the Panel must accept a range of variability. That is admittedly a subjective determination, and we have attempted to strike a balance by accepting an industrial city like Tonawanda with a mid selling price of a home of \$77,000 and a per capita income of \$18,000 and a Village like Massena with a per capita income of less than \$13,000 and a mid selling price of homes of \$35,000. We have excluded Garden City Village,

which is located in Nassau County, where the average family income is more than two and one-half times that of Oswego and where County per capita income is more than twice as high and mid selling price of homes is more than three times as great. We have similarly excluded Scarsdale, which is another very affluent community located in Westchester County bordering New York City where the average family income of about \$135,000 per annum in 1989 was more than five and one-half times that prevailing in Oswego. County personal income in 1990 was two and one-quarter times as high as that prevailing in Oswego County and the mid selling price of homes at about that time was more than four and one-half times that low level prevailing in Oswego.

Panel Table VI tabulates the 1993 entry level and top level salaries for jurisdictions deemed to be comparable and averages are calculated in each column with and without Plattsburgh. This was done because Plattsburgh is a community with particularly severe economic problems and its entry level salary in particular may possibly be anomalous. The table indicates that the average entry level salary with Plattsburgh excluded was

PANEL TABLE VI
OSWEGO FF/CITY OF OSWEGO
COMPARABLE SALARIES

<u>JURISDICTION</u>	<u>ENTRY LEVEL</u>	<u>TOP LEVEL</u>	<u>YEAR</u>
Auburn	26913	37546	1993
Cortland	22811	29488	1993
Elmira	24586	32590	1993
Fulton	21697	31580	1993
Kingston	23924	31585	1993
Massena	27740	29040	1993
Middletown	26088	37866	1993
Ogdensburgh	24689	27960	1993
Plattsburgh	18450	26711	1993
Tonawanda	26910	35538	1993
Watertown	<u>24818</u>	<u>31236</u>	
w/o Plattsburgh X	25018	32443	
w/ Plattsburgh X	24420	31922	
Oswego	24331	34638	1992
X/Oswego w/o Plattsburgh	1.028	0.9366	
w/ Plattsburgh	1.004	0.922	

2.8% above the 1992 Oswego salary. With Plattsburgh included, the average is only 0.4% above the 1992 Plattsburgh entry level. However, at the top level, without Plattsburgh, the Oswego salary exceeds the average of the comparables by nominally 6% and with Plattsburgh included, by nominally 8%. We are therefore unable to subscribe to the Union claim that "... we, in the Oswego Fire Department are poorly paid in comparison with the other New York State Fire Departments, or even skilled labor in the immediate area, ..."

e. Twenty Year Retirement Plan and Salaries

Turning next to the matter of the Union demand for implementation of a 384d 20 year retirement plan (20 year) we refer to Panel Table VII.

PANEL TABLE VII

OSWEGO FF/CITY OF OSWEGO

PENSION PLANS OF COMPARABLE JURISDICTIONS

Auburn	384d
Cortland	384d
Elmira	25 yr +1/60 Soc 384
Fulton ;;	384d
Kingston	1 yr. final average 302-D with various options
Massena	384d
Middletown	not specified
Ogdensburgh	384d
Plattsburgh	384d
Tonawanda	384d Eff. April 1, 1989
Watertown	384d-384e possible if at no greater cost

Table VII indicates that the City's concession that some comparable jurisdictions do provide the 384d retirement pension plan is something of an understatement as the prevailing practice clearly conforms to the Union proposal. Moreover, we think it significant that employees of Oswego's other public safety department have for some time been the beneficiaries of a 384d pension plan. It is also noteworthy that only that department received a salary adjustment in 1993 (C12) which was apparently not adversely affected by the fact of its enjoyment of the more costly pension plan. The award in the present matter will direct the Employer to implement a 384d plan for the Fire Department bargaining unit effective January 1, 1995 but in doing so we recognize that a substantial potential cost is involved and have

given weight to this in formulating salary revisions.

In formulating our salary determinations, we have sought to strike a balance between a general preservation of the relationship between the Oswego Public Safety Departments, comparable practice, movements and trends in the CPI, the City's ability to pay, and the magnitude of the changes in the economic package taken as a whole which will result from the Panel's determination. We agree in particular with the Employer's assertion that pension programs are costly. We have calculated from the financial data provided (C9) that the existing 25 year plan imposed represented a cost of nominally 18% of the Fire Department Budget (J4) in 1993. Even without changes in the retirement eligibility requirements, the cost of this program is subject to some acceleration over the years and it is equally true, as the City offers, that this will be absolutely the case with the 384d program. The Union has cited possible offsets to the increased cost resulting from the likely retirement of senior people who will be replaced by entry level recruits at a lower salary. Our analysis of the likely savings based on the City's salary and health insurance data (C13) suggests that any such

offset savings from this source will be minimal at best. However, even under the worse case scenario, we infer that the added cost attributable to the adoption of the 384d plan would add less than \$2 per thousand to the tax rate in 1995 or possibly 1996. While the payer's pain may exceed even the payee's pleasure, fiscal stress does not necessarily equate to financial paralysis. We conclude that is not an unreasonable added burden particularly since we have accorded offsetting weight in balancing the direct salary adjustments.

In the matter of salaries, the Panel concludes that a 2% retroactive across the board increase in each of the two years 1993 and 1994 respectively, is justified and equitable. In addressing the 1995 calendar year, we are of course compelled to speculate about likely future movements in the consumer price index. We believe there is abundant evidence that government monetary policy is committed to the containment of price increases. While there is a certain momentum in the economy substantial wage and salary increase which contribute meaningful upward thrust to the consumer price index do not appear to be in the offing. If, as one hopes, the American economy and those of our trading partners continues on an upward path at a

modest pace, increases in commodity prices are likely to occur and be reflected by modest increases in the consumer price index. In considering these facts, it is our judgement that a 3% across the board increase will be equitable for the 1995 calendar year.

e. **Retirees Health Insurance**

The final economic package item before us is the Union petition for modification of Article 21.2 to provide that employees retiring after January 1, 1995 with 20 years of service shall be entitled to fully paid health insurance for themselves and/or spouses so long as either shall live. Firefighting is a career to which youth is best suited. However, a person retiring after 20 years of service is likely to be vigorous and well suited to other economic activities. We believe it a reasonable inference that the 20 year retiree will enjoy enhanced rather than diminished income. It seems not unreasonable to expect that they will share in medical insurance costs. We do however take note of the parallel provision in the other Public Safety Department, J5. This may have been negotiated in more halcyon times and we have considered that as well in modifying the Expired Agreement's provision relative to 20 year service

retirees after January 1, 1995. The award shall therefore amend Article 21.2 of the Expired Agreement to provide as follows:

In the case of employees retiring after January 1, 1995 with twenty, (20) years of service, but less than twenty-five, (25) years of service, the City will pay eighty-five (85%) of such health insurance cost.

III. AWARD

The undersigned constituted a duly designated public arbitration panel in the above-captioned interest arbitration having achieved majority concurrence in that at least two of us have concurred on each of the issues before us for determination, finds and awards as follows:

1. Article 11 of Expired Agreement

The parties shall incorporate in the Successor Agreement as Provision 11.2, the five provisions of Appendix F of the Expired Agreement as they appeared therein stipulating as follows:

1. Compensatory time off will be given for approved optional fire training courses that require the use of an individual's personal time.

2. For each full day attended at an approved school, participating fire fighters will receive one full day or night in return for time spent at school and in transit. Compensatory time off for schools that require less than a full day will be prorated on an hourly basis.

3. As with mandatory courses, individuals attending approved courses will be compensated for gas and mileage at the standard rate when use of a private vehicle is necessary.

4. Compensatory time off will be allowed at the discretion of the officer in charge and only when it will not under man the shift being worked.

5. Once granted compensatory time off, an individual will not be subject to call back.

2. Article 17 of Expired Agreement - Sick Leave

Article 17 of the Expired Agreement - Sick Leave, shall be incorporated in the Successor Agreement without modification.

3. Article 23 of Expired Agreement - Overtime and Emergencies

Article 23 of the Expired Agreement shall be incorporated in the Successor Agreement except that the condition stating "... that a minimum of four (4) hours pay." shall be revised to state;

"... a minimum of two (2) hours pay."

4. Article 21.1, Medical Insurance

That portion of the provision in the Expired Agreement stating "Effective January 1, 1992, employees shall contribute 10%." shall be revised to state;

"Effective January 1, 1995 an employee shall contribute 15%."

5. **Articles 26, 27, 28, 29 and 30 of the Expired Agreement and Article 26 of the Successor Agreement**

Articles 26, 27, 28, 29 and 30 of the Expired Agreement shall be Renumbered as Articles 27, 28, 29, 30 and 31 respectively in the Successor Agreement. Article 26 of the Successor Agreement shall state as follows:

The other provisions of this Agreement relating to sick leave accruals (Article 17.3,a) vacation leave (Article 19.2) and personal leave (Article 16.1) and uniform allowance (Article 25.1) notwithstanding employees on 207-a GML leave for more than nine calendar months shall not continue to accrue vacation leave, sick leave or personal leave and will receive any clothing allowance on a prorated basis. If clothing allowance has already been paid, the employee will be permitted to use that money toward clothing.

Employees in GML 207-a leave status shall retain all leave credits accrued up to and including the first nine calendar months in such status and upon return to work will again accrue leave time and credits prospectively and prorated uniform allowances reduced by any overpayments received at the inception of the 207-a leave. Persons who do not return to active duty may retain any overpayment.

6. **Article 27.1 of the Successor Agreement - New York State Retirement**

Article 27.1 of the Successor Agreement shall be amended to state:

The City shall place in force a 384d (20 year) retirement pension plan effective January 1, 1995.

7. **Appendices A through E of the Expired Agreement**

Appendices A through E of the Expired Agreement shall be deleted.

8. **Appendix A of the Successor Agreement - 1993 Salary Schedule**

Appendix A of the Successor Agreement shall be equal to 1.02 times the schedule of Appendix E of the Expired

Agreement in every position. Accordingly, Appendix A shall be as shown in the appropriately captioned table herein.

Appendix A - 1993

	<u>Base</u>	<u>Yr. 1</u>	<u>Yr. 2</u>	<u>Yr. 3</u>	<u>Yr. 4</u>	<u>Yr. 5</u>	<u>Yr.10</u>	<u>Yr.15</u>	<u>Yr.20</u>
Firefighter	24,818	26,791	27,739	28,925	30,348	32,008	32,893	34,002	35,331
Lieutenant						34,523	35,412	36,518	37,850
Captain						36,518	37,405	38,512	39,843
Deputy Chief						38,512	39,400	40,509	41,837
1st Asst. Chief							41,394	42,502	43,219

9. Appendix B of Successor Agreement - 1994 Salary Schedule

Appendix B of the Successor Agreement shall be equal to 1.02 times the schedule of Appendix A in the Successor Agreement in every position. Accordingly, Appendix B shall appear as shown in the appropriately captioned table herein.

Appendix B - 1994

	<u>Base</u>	<u>Yr. 1</u>	<u>Yr. 2</u>	<u>Yr. 3</u>	<u>Yr. 4</u>	<u>Yr. 5</u>	<u>Yr.10</u>	<u>Yr.15</u>	<u>Yr.20</u>
Firefighter	25,314	27,327	28,294	29,504	30,955	32,648	33,551	34,682	36,037
Lieutenant						35,213	36,121	37,248	38,607
Captain						37,248	38,153	39,282	40,640
Deputy Chief						39,282	40,188	41,319	42,674
1st Asst. Chief							42,222	43,352	44,084

10. Appendix C of Successor Agreement - 1995 Salary Schedule

Appendix C of the Successor Agreement shall be equal to 1.03 times the schedule of Appendix B in the Successor Agreement in every position. Accordingly, Appendix C shall appear as in the appropriately captioned table herein.

Appendix C - 1995

	<u>Base</u>	<u>Yr. 1</u>	<u>Yr. 2</u>	<u>Yr. 3</u>	<u>Yr. 4</u>	<u>Yr. 5</u>	<u>Yr.10</u>	<u>Yr.15</u>	<u>Yr.20</u>
Firefighter	26,074	28,147	29,142	30,389	31,884	33,627	34,557	35,722	37,118
Lieutenant						36,270	37,204	38,366	39,765
Captain						37,594	39,298	40,461	41,859
Deputy Chief						40,461	41,393	42,559	43,954
1st Asst. Chief							43,488	44,653	45,406

11. **Retroactivity - 1993**

Members of the Bargaining Unit who worked during 1993 shall be paid the difference between the earnings they would have realized under the schedule in Appendix A of the Successor Agreement and the earnings received during calendar 1993.

12. **Retroactivity - 1994**

Members of the Bargaining Unit who worked during calendar 1994 shall be paid the difference between the earnings they would have received under the schedule in Appendix B and those actually paid them in calendar 1994.

13. **Article 21.2 of the Expired Agreement - Medical Insurance Upon Retirement**

That portion of Article 21.2 of the Expired Agreement stating:

In the case of employees retiring after January 1, 1986, with twenty, (20), years of service, but less than twenty-five, (25), years of service, the City will pay seventy-five (75%), of such health insurance cost.

shall be amended for inclusion in the Successor Agreement to state:

In the case of employees retiring after January 1, 1995 with twenty, (20) years of service, but less than twenty-five (25) years of service, the City will pay eighty-five (85%) of such health insurance cost.

14. **Article 31 - Duration**

Article 30.1 of the Successor Agreement shall state:

This Agreement will be in effect as of January 1, 1993 and remains in full force and effect until December 31, 1995 and from year to year

thereunder unless either Party to this Agreement notifies the other Party at least one hundred twenty (120) days prior to the expiration date hereof, or any annual renewal thereof, of their intention to amend or modify this Agreement.

This award provides a determination in each and every impasse issue presented to the Panel for resolution.

Delmar, New York
September 19, 1994

Respectfully submitted,

Summer Shapiro
Summer Shapiro
Chairperson

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

Sworn to before me this 14th day of October, 1994.

Eleanor C. Ablett
Notary Public

ELEANOR C. ABLETT
Notary Public, State of New York
Qualified in Albany County
No. 01LA4905423
Commission Expires Aug 18, 1995

William M. Wallens
William M. Wallens, Esq.
Employer Designated Panel Member
Concurring

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

Sworn to before me this 29th day of September, 1994.

Cathy R. Fancher
Notary Public

CATHY R. FANCHER
Notary Public, State of New York
No. 01LA4905423
Qualified in Rensselaer County
Commission Expires 01/14/95

William E. Crego
William E. Crego
Union Designated Panel Member
Concurring

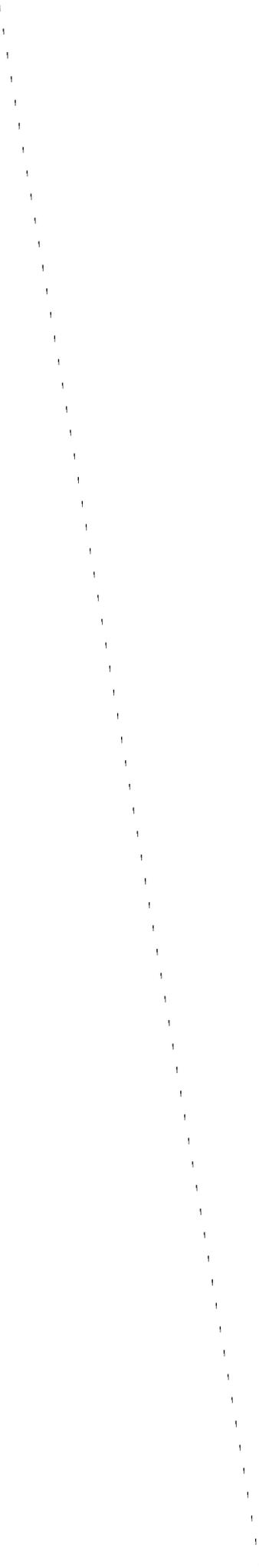
STATE OF NEW YORK)
) SS.:
COUNTY OF OSWEGO)

Sworn to before me this 30 day of September, 1994.

Mary F. Sheffield
Notary Public

MARY F. SHEFFIELD # 4881087
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN OSWEGO COUNTY
COMMISSION EXPIRES DECEMBER 31, 1994

100



OPINION AND AWARD
PANEL APPENDIX A

ROEMER AND FEATHERSTONHAUGH, P.C.

COUNSELLORS AT LAW
99 PINE STREET

ALBANY, NEW YORK 12207-2734

NEW YORK OFFICE:
600 THIRD AVENUE
NEW YORK, NEW YORK 10016
(212) 599-2244
FAX: (212) 599-2221

(518) 436-7663
FAX: (518) 426-5853

SYRACUSE OFFICE:
115 E. JEFFERSON STREET
SYRACUSE, NEW YORK 13202-2501
(315) 472-7517
FAX: (315) 472-7791

August 29, 1994

NYS PUBLIC EMPLOYMENT RELATIONS BOARD
RECEIVED

OCT 07 1994

CONCILIATION

Mr. Sumner Shapiro
Labor Arbitrator
64 Darroch Road
Delmar, New York 12054

RE: City of Oswego and Firefighter's Association
Our File No.: OSWEGO 31362

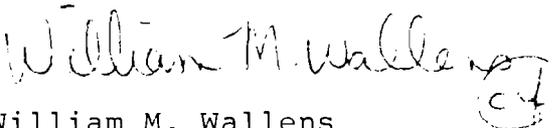
Dear Mr. Shapiro:

This is to confirm that the City of Oswego has consented to, and hereby grants the Interest Arbitration Panel, the jurisdiction and authority to issue an Award for a period of three years.

By a copy of this letter to William Crego, I am requesting that he confirm that the Firefighter's Association has granted similar jurisdiction to the Arbitration Panel.

Very truly yours,

ROEMER AND FEATHERSTONHAUGH, P.C.


William M. Wallens

WMW:crf

cc: Honorable Terrence M. Hammill, Mayor
M. Rita Tickle, Personnel Director
William Crego, Firefighter's Association

OPINION AND AWARD
PANEL APPENDIX B

William E. Crego
144 Niagara Street
Oswego, NY 13126
Tel: (315)343-6935

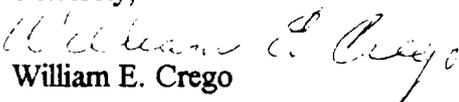
September 7, 1994

Mr. Sumner Shapiro, Arbitrator
64 Darroch Road
Delmar, NY 12054

Dear Mr. Shapiro,

This letter is to confirm that the Negotiating Committee for the City of Oswego Firefighters Association, IAFF Local 2707 has consented to, and hereby grants the Interest Arbitration Panel the authority to issue an award for a period of three (3) years.

Sincerely,


William E. Crego

cc: John Sterio, Chairman - Firefighter's Association Negotiating Committee
William Wallens, City of Oswego

