

NEW YORK STATE
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Compulsory
Interest Arbitration

Between

North Tonawanda Professional
Fire Fighters Association, Local 1333

OPINION AND
AWARD

And

PERB Case No
IA 94-014
M93-470

The City of North Tonawanda

Before: John G. Watson - Neutral Chairperson
Jeffrey N. Mis, Esq.- Public Employer Panel Member
Francis R. Molnar - Employee Organization Panel
Member

Appearances on Behalf of the Parties:

Town: Robert Sondel, Esq.
Union: William R. Lewis, Esq.

The City of North Tonawanda (hereafter referred to as the City) and the North Tonawanda Professional Fire Fighters Association, Local 1333 (hereafter referred to as the Union), negotiated an agreement extending from January 1, 1990, through December 31, 1993. As the parties were unable to reach a new agreement through negotiations, an impasse was declared on January 11, 1994. Two mediation sessions were held with the parties and a Public Employment Relations Board (PERB) representative. By letter dated October 6, 1994, from Pauline R. Kinsella, Chairperson of the New York State PERB, this panel was advised it had been designated as the panel members of the Compulsory Interest Arbitration, and John Watson would serve as the Chairperson of the Panel.

This Interest Arbitration arises under the provisions of Section 209.4 of the New York Civil Service Law. Pursuant to our statutory authority, the Panel conducted a hearing in North Tonawanda, New York, on December 7, 1994. At the hearing, the parties were given full opportunity to present their respective positions as well as present documentary evidence and testimony in support of those positions.

The Panel met in executive session in North Tonawanda, New York, on December 15, 1994, and January 20, 1995. We have reviewed the evidence and arguments of the parties extensively and have taken into consideration the express criteria of Section 209.4 (c) (v) which provides:

" In arriving at such a 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 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 bargaining agreements negotiated between the parties in the past providing for compensation and fringe benefits, including, but not limited to, the provisions for salary, insurance and retirement benefits, medical and hospitalization benefits, paid time off and job security."

Prior to reaching a decision, the Panel carefully studied and discussed the information submitted by the parties which had been carefully prepared and presented by them at the Hearing. Particular attention was given to the comparative data presented by the parties.

Comparable Comparisons

The Union presented comparable data using the Lockport Fire Department and the North Tonawanda Police Department. The Union indicated these two departments were both similar in nature to the

North Tonawanda Fire Department. The City, on the other hand, used the Tonawanda Fire Department and the Lockport Fire Department in making its comparisons. The City argued that there were several differences between the North Tonawanda Police Department and the North Tonawanda Fire Department, and it would be inappropriate to use the Police Department for comparison purposes. The Panel has dealt with this problem by evaluating each proposal on its own merit, by taking into consideration the City's ability to pay as well as other statutorily required considerations.

The unresolved issues are as follows:

1. Wages
2. Holiday Compensation

DECISION

After due consideration, a majority of the Panel has arrived at the following conclusions concerning the impasse and its resolution.

Issues

1. Wages

Union

The Union requested wages be increased as follows:

1994 - 7.6 percent

1995 - 4.1 percent

City

The City indicated it is evaluating its current economic situation and proposed that wages be kept at the present 1993 level.

Defense of the Positions

Union

The Union provided a considerable amount of data comparing the North Tonawanda Fire Department with the Lockport Fire Department and the North Tonawanda Police Department. The data showed that to obtain parity with the Lockport Fire Department, a 7.6 percent retroactive increase would be necessary for 1994, and a 4.1 percent increase for 1995. For parity to exist with the North Tonawanda Police Department, a 5.2 percent increase would be necessary for 1994, and it was noted the North Tonawanda Police Department is currently in negotiations for its 1995 contract. The Union noted

it investigated a number of other organizations in the area and found that they were not comparable.

A significant amount of additional information was submitted by the Union including such comparisons as: EMS compensation, longevity pay, medical insurance, sick benefits, accumulated sick leave, sick buy-back, personal leave, vacation, uniform allowance, death benefits, retirement plan, CORA deductions, continuing education, completed education, retiree medical coverage, briefing time, and automatic out-of-title consideration.

City

The City provided comparative data for the Tonawanda and Lockport Fire Departments. The City noted that in comparing these two fire departments with the North Tonawanda Fire Department shows that the increase requested by the Union is not warranted.

The City also noted that although the salaries in the comparable fire departments are slightly higher than those of the City, fringe benefits must be considered as a part of the compensation package. The City indicated the fringe benefits in North Tonawanda are much better than those of the other two fire departments and cited specific examples comparing the fringe benefits packages.

The City indicated that during the period from 1990 to 1994 the City's homestead tax rate has increased by 27.5 percent, and during that same period of time, the non-homestead tax rates have also increased. The City indicated that although this is due to a declining commercial and industrial tax base, it is apparent that

the taxpayers of the City are shouldering a heavy financial tax obligation.

The City stated the cost of the 384-e Retirement Plan has become a costly item for the City and must be given a high level of consideration in determining a wage increase.

OPINION AND AWARD

In reviewing the information submitted by the parties relative to the wages issue, a number of items are of significance. First, the wages of the Union members are somewhat lower than those of the Tonawanda and Lockport Fire Departments. This difference is greatest at the fire fighter - top step which is the step where the majority of the North Tonawanda union members currently are. Second, while the Union argued that the fringe benefits package of Union members is not as good as those in other departments, the City has argued the fringe benefits package of Union members is better than both the Lockport and Tonawanda Fire Departments. It is very difficult to determine which benefits package is best; nonetheless, the differences in the different contracts were reviewed by the Panel, and consideration was given to a number of factors, especially the CORA deduction and the 384-e retirement plan agreed to in the last negotiations. Third, concerning the City's ability to pay, while the tax rates have gone up over the last several years, the Panel does not feel that its Award is not within the City's ability to pay. Fourth, as noted by the Union, it has negotiated in good faith and has made other concessions saving the City money.

After considering the above factors, other information submitted by the parties, and the cost-of-living index in the Buffalo area for 1994, the Panel awards as follows:

Retroactive to January 1, 1994, each Union member shall receive a 2.8 percent increase for the first year of the agreement and an additional 3.0 percent wage increase retroactive to January 1, 1995, for the second year of the agreement.

Issue2. Holiday CompensationUnion

The Union has requested that Section 8.22 be amended to add the following:

(3) For each credited holiday, an employee shall receive twelve (12) hours of his current pay and for each credited half-holiday, an employee shall receive six (6) hours pay.

City

The City indicated it is not willing to change this section of the contract.

Current Contract Language

8.22 Each employee shall receive his regular pay on a holiday whether such employee is on a day off or works such day. An employee who is on a day off on a holiday shall receive his legal pay plus a compensatory day off credit or half-credit for such holiday or half-holiday. An employee who works on a holiday shall receive his regular pay plus a compensatory day off credit of half-credit for such holiday or half-holiday. Holiday "off lists" shall be maintained for the fire driver-fire fighters on each platoon. Each platoon list will show the fire driver-fire fighters in that platoon in numerical order in accordance with present practice. An employee who is at the top of the holiday list for the next succeeding holiday shall have the option of working on such holiday, in which case he will receive his regular pay plus a compensatory day off credit or half-credit for such holiday or half-holiday, or he may elect to take the day off, in which case he will receive only his regular pay for such day. An employee may receive a compensatory day off for each full credit he has accumulated. An employee must apply in writing to the Fire Chief for such a day off on the form provided in Appendix B not less than five (5) working

days prior to the requested day off. If the needs of the Fire Department, as determined by the Fire Chief, permit, the day off will be granted. If the requests of less than all of those employees who requested the same day off can be so granted, the following rules will apply:

- (1) the needs of the Fire Department, including the need for the particular skills of the employees seeking the day off shall be given primary consideration;
- (2) thereafter, the employee who first requested the day off shall be granted the day off.

Defense of the Positions

Union

The Union indicated a comparison with the Lockport Fire Department and the North Tonawanda Police Department shows that both of those departments receive holiday compensation considerably greater than the North Tonawanda Fire Department union members. The proposed change in Section 8.22 of the Agreement would bring the Union members to parity in holiday compensation with the Lockport Fire Department and the North Tonawanda Police Department.

City

The City noted that it currently grants one (1) more holiday than both the Lockport and Tonawanda Fire Departments. The City indicated that while both Lockport and Tonawanda grant twelve (12) hours of pay per holiday, there are differences in how this is paid. The City further indicated that increasing holiday compensation by four (4) hours would create a substantial burden on the City, as it would increase the cost of holiday compensation by

an additional \$49,144. This would equate to a 1.75 percent increase in Fire Fighters' salaries. The City noted that this increase is not warranted based upon the fringe benefit differentials it has shown between Union members and the Lockport and Tonawanda Fire Departments.

OPINION AND AWARD

In reviewing the information submitted by the parties concerning Holiday Compensation, it is of major significance that both the Lockport Fire and Tonawanda Fire Departments have a higher level of holiday compensation in their respective contracts than the North Tonawanda Fire Department. In order for North Tonawanda to obtain parity with both the Lockport and Tonawanda Fire Departments, the proposal of the Union should be accepted effective with the first year of the new agreement. Accordingly, the Panel awards:

The proposal to alter Section 8.22 of the Agreement as follows

(3) For each credited holiday, an employee shall receive twelve (12) hours of his current pay and for each credited half-holiday, an employee shall receive six (6) hours pay.

be added to the Agreement effective January 1, 1994.

DATED: *January 20, 1995*

John G. Watson

John G. Watson
Arbitrator
Panel Chairman

Jeffrey N. Mis, Esq.
City Panel Member

Francis R. Molner

Francis R. Molner
FFA Panel Member

City of North Tonawanda

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January 27, 1995

Mr. John G. Watson
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RE: Compulsory Arbitration - PERB Case #IA94-014; M93-470
City of North Tonawanda & North Tonawanda Professional
Firefighters Association, Local 1333

Dear Mr. Watson:

This letter is being sent to confirm the telephone conference that took place today between us along with Mr. Francis Molnar who is the Union's panel member. As I stated, I will not be signing the arbitration award as presented to the panel at the January 20, 1995 panel session. I am also aware that the majority of the panel is in favor of this award and it will be drafted in its final form this coming week. As you know, I have already informed the Mayor and Common Council of the award so they could use it in their present budget deliberations for 1995. Mr. Molnar will be informing the full union membership today.

For the record, this panel member is not executing the award after taking a hard look at the comparables presented at the hearing and weighing the award's impact on the City. I believe that the 2.8% salary increase in year 1 of the award and the 3.0% increase in year 2 are excessive. The same belief applies to the dramatic and significant increase in Holiday Pay from the present 8 hours to the awarded 12 hours in year 1. This panel member believes that such an increase, if awarded at all, should have occurred no earlier than year number 2. The combination of the 2.8% increase and the 12 hour Holiday Pay puts the total award package in year 1 at approximately 4.75%. This panel member remembers the City's position at the arbitration being that based upon certain benefits that the union already had contractually, such as 384-e, personal leave, vacation days and hospitalization plan, that an increase in wages and holiday pay should be nominal. This panel member does understand that some type of wage increase was warranted, but not to the extent as awarded.

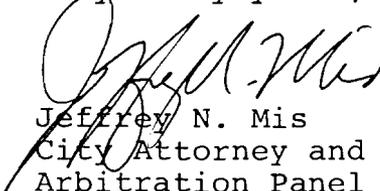
It should be noted that the City and the Union did agree to a modification of the present hospitalization plan and it was instituted in 1995. Although, the City did not reap any benefit in year 1994 for this change, as it will in 1995. I understand that the negotiations and arbitration did extend this final resolution into 1995, but I do not see in the award any consideration to the City for this loss of savings in 1994, while the Union continued to have the top health insurance plan available in 1994. Further, the Union is to receive retroactive wage increases for 1994, but the City is not receiving a set-off in the award for its health insurance cost for that year. Taking all of the above into consideration, a wage increase of 2.0% and an increase in Holiday Pay from 8 to 10 hours in year 1 would be more appropriate.

There is no argument from this panel member that the City of North Tonawanda is generally in sound financial shape. But, the fact that the City can increase taxes according to its constitutional tax limit in no way relates to the practical ability of the taxpayer, who is the public employer, to pay those taxes. The total package awarded will undoubtedly place a larger burden on the taxpayer, even though the total is nowhere near what the Union argued for at the arbitration.

In summary, I would like to thank you for your time and effort in this arbitration, and the openness you have shown. It was a pleasure dealing with you and Mr. Molnar, as both of you were professional and courteous throughout. This dissenting opinion is just that, an opinion, based upon what this panel member believes to be the proper analysis. Lastly, it is important to emphasize that my opinion as a panel member with regard to the award should not be taken as a rebuke of the fire union. The firefighters of the City of North Tonawanda are diligent and hard-working and deserve to be compensated for their fine efforts in fighting fires and saving lives. This member's opinion is formulated through an analysis of comparables presented and the fiscal impact of this award on the City and its taxpayers.

Thank you for allowing me to submit this dissenting opinion on the award and, if you have any questions, please do not hesitate to contact me.

Very truly yours,


Jeffrey N. Mis
City Attorney and
Arbitration Panel Member

JNM/s

cc: Mr. Francis Molnar