

NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Compulsory
Interest Arbitrator Between

CITY OF NIAGARA FALLS

and

PERB Case Nos.
IA94-026; M94-300

NIAGARA FALLS UNIFORMED FIREFIGHTERS
ASSOCIATION, AFL-CIO

Pursuant to Civil Service Law, Section 209.4

PANEL MEMBERS:

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APPEARANCES:

FOR CITY OF NIAGARA FALLS

Angelo Massaro, Attorney

FOR UNIFORMED FIREFIGHTERS ASSOCIATION

Bernard Stack, Attorney

PROCEDURE:

New York State Public Employment Relations Board, pursuant to Section 209.4 of the NY Civil Service Law, designated a Public Arbitration Panel on February 28, 1995, for the purpose of rendering a determination of the impasse between the City of Niagara Falls, (the "City") and the Niagara Falls Uniformed Firefighters Association (the "Association").

The parties were unable to reach settlement during the negotiations following the expiration of an interest arbitration award for 1993. This panel was empowered to render an award for no longer than the following two years of 1994 and 1995.

A pre-hearing conference was held on April 4, 1995, at which time the parties agreed upon the issues to be presented to the Panel. The parties submitted pre-hearing briefs, and hearings were held in Niagara Falls Convention Center on April 26, May 17 and 22, 1995. The parties were afforded full opportunity to present evidence and argument and to examine and cross-examine witnesses who were sworn. Post-hearing briefs were mailed to the Panel on June 21, 1995. The Panel met in executive session in Rochester on June 28, 1995.

As required by Section 209.4 of Civil Service Law, the Panel considered the following factors in arriving at its unanimous award:

- a. comparison of the wage, 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 provided 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.

In consideration of the fact that the Panel reached agreement on all of the issues submitted for determination, the Panel agreed that this Award would summarize briefly the major arguments raised by the parties in defense of their positions. The parties supplied more than adequate documentation and testimony to support their arguments. Basic demographic, economic, and financial data consisting of tables, charts, graphs, reports, studies, and news reports were provided, many of which repeated or simply updated the evidence supplied to the Panel in the prior Interest Arbitration proceeding, chaired by Thomas Rinaldo. The important differences are addressed in this Award; the Association agreed to use the communities selected by the City for comparability, and the recent settlements reached with the other uniformed services in the City were relied on by both parties.

ISSUES:

Salary: *The Association seeks a ten percent increase for 1994 and a ten percent increase for 1995. Those increases are to be retroactive.*

Ready pay: *The Association seeks two extra hours of pay for each week actually worked.*

EMT/D and CFRD pay: *The Association seeks an increase in base salary of three percent for EMT/D's (any firefighter who is a New York State licensed Emergency Medical Technician with defibrillator capability) and an increase in base salary of two percent for CFRD's (any Firefighter who is a New York State licensed first responder with defibrillator capability).*

Shift differential: *The Association seeks an increase in shift differential of fifteen cents an hour (from thirty-five cents to fifty cents).*

Vacation cash conversion: *The city seeks a waiver by the Association of the vacation cash conversion provided in the current agreement.*

All of the issues agreed upon for determination by the Panel were economic and the parties' arguments that apply to each of them are summarized in the following:

POSITIONS OF THE ASSOCIATION:

The Association argued that the statutory factors have been satisfied by the evidence and testimony offered to show that the Firefighters lag in terms of base salary and total compensation when compared to other City units. They also compare unfavorably with firefighters in other communities selected by the City. The Association believes that City's improving economic condition and its settlements with other units show that the City can afford the costs of a reasonable settlement.

The Association sought to bring its members into closer parity with other public safety units in Niagara Falls, particularly with the Police Club. The Association had raised the same issue in the previous interest arbitration and offered data to show that parity had been an historical reality, but that it has eroded within the last five years. In 1994 the Police Club and the Police Brass settled their contracts and received the benefit of the 384E Retirement Plan which the Association and the Fire Brass had received in 1992. No salary increase accompanied the granting of that benefit in 1992. The Police units received no salary increase with that retirement benefit and the difference in parity was reduced. The Fire Brass received a pay increase in 1994. The Fire Alarm Operators reached a settlement in 1994 that recognized their need for parity with the Police Dispatchers, the comparable employees in the Police Department. The Association is now seeking increases in salary for 1994 and 1995 that will address the parity discrepancies. It estimates that without an increase the Firefighters who remain at the compensation level of the 1993

Award will be behind Fire Brass and Police units by at least 10% and seeks increases in that amount for each year of this Award.

The Association also contended that firefighters in other communities selected for the purpose of comparing salary and benefits fare much better in every city with the exception of Utica, where the difference is slight. Utica received two lump sum payments per a four year arbitration award in lieu of salary adjustments for 1993 and 1994. But in Binghamton, Lockport, Schenectady, and Troy, base salary, total compensation, hourly rates, and longevity are greater than those for Niagara Falls firefighters.

The Association also presented detailed documentation and testimony to show that Niagara Falls firefighters have fallen behind other firefighters in comparable communities. As of 1994, Niagara Falls firefighters were 8.3% behind in base salary and 6.0% behind in total compensation.

The Association presented testimony and documents to convince the Panel that the City does have the ability to make reasonable adjustments in compensation for firefighters. For example, the Association believes there are sufficient funds in the 1995 budget and there was a surplus in the 1994 budget that would allow for increases to this unit. It also points out that the City reached settlements through 1996 with other bargaining units that provided increases in compensation. The Fire Brass received 11.7% total compensation for 1994 - 95. The two Police Units received 3% increase for 1995 and the 384E benefit worth 6% for 1994. The Association acknowledges that the waiver of vacation cash conversions by other units reduces the actual cost to the City. In addition to money available in the budget, short-term borrowing or increased taxes are possible ways for the City to finance the costs of adjustment. The Association claims the City is not at its constitutional taxing limit.

The Association also asks the Panel to note that the City's economic position is improving. Job loss is reversing, and unemployment rates are down. Money for the Love Canal is forthcoming from the State, and the area did not suffer a severe cut in state aid. The Association concedes that the economic conditions have not been bright in the past, but offered public statements made by the City itself to show that conditions are improving.

The particular characteristics of the job were emphasized in the demand for increased compensation for EMTD's and CFRD's who must be certified and recertified to perform the additional life savings duties. Half of the present number in the unit are currently certified and all new firefighters will be required to be certified.

POSITION OF THE CITY:

The City also couched its arguments in the context of the statutory factors, with emphasis on ability to pay; the costs and implications of settlements with other City bargaining units, especially uniformed services; and comparisons with firefighters in similar communities in New York State.

In terms of ability to finance any increases in salary or other economic items, the City argues that it has been plagued by the failure of the previous City administration to complete audits for 1989 and 1990. As a result, the administration that took office in 1991 believed it was operating with a seven million dollar surplus. Actually, at the end of 1993 it had a four million dollar negative fund balance. To overcome that deficit, it was necessary to transfer funds from the water and sewer funds, on a one time basis. The controller testified that a structural imbalance still exists.

The City also contends that its economic standing in the State remains poor, compared to other areas. Its per capita income is 45th out of 61 cities in New York, while the per capita tax is the 9th highest of all cities. Unemployment as of February 1995 was 10.7%, compared to the Niagara County rate of 6.2% and the New York State rate of 6.8%. Also, 26.7% of the City's population are receiving some form of public assistance. The City population is aging and shrinking.

Over the past decade the City has suffered a major loss of industrial jobs, at a rate greater than that of other areas of the state or of the national average.

The City compares its firefighters to those in Lockport, North Tonawanda, Schenectady, and Utica and concludes that its total economic package is not far below all cities except Utica. It claims that Niagara Falls

firefighters are almost equally compensated with those in Utica, the city it claims is most comparable in demographics and economics. The City

maintains that personal leave and vacation should be included in those comparisons, contrary to the position of the Association. There is a cost for replacement services when personnel are absent and firefighters currently have the monetary benefit of converting up to four weeks vacation into cash. Even if those benefits are excluded, the Niagara Falls firefighters were only approximately 2.4% behind the average of comparable cities as of 12/31/93 or 3.7% behind on base salary.

In comparing the status of firefighters to the other uniformed services, the City disputes the Association's claims that those other units fared so well. In return for the 3% improvement in wages for 1995 the City received the benefit of the waiver of vacation cash conversions, so that the net cost of the increases amounted to .85% for the Fire Brass, 1.84% for the Police Brass, and 3.175% for the Police Officers.

While the Firefighters referred to historic parity with Police Officers, the City insists there are significant differences between the units that support the disparity that now exists. Firefighters are not required to be residents, as are the Police. Firefighters are scheduled fewer than 180 days each year while Police are scheduled for fewer total hours each year. The City admits there is disparity but argues that each unit would always be setting a pace for the other if parity were the standard. Instead, the City would like to see each unit treated more independently.

DISCUSSION AND AWARD:

In its deliberations, the Panel properly considered the factors required by statute in its review of the record. It considered comparability with firefighters in other communities; the relationship of this unit to other City bargaining units, particularly the Police Officers; the special characteristics of the profession; the financial ability of the City to provide added compensation; and the interests and welfare of the community served by the Firefighters.

The Panel received documentation that addressed each issue in terms of these factors and listened to testimony that reviewed, clarified, and supplemented the information. Much of the evidence offered by the parties in support of their positions was contained in exhaustive pre-hearing briefs. The parties had prepared documentation for the prior Interest Arbitration panel that concluded its work with an award in May 1994 and were able to use much of the material. This discussion will summarize findings that relate specifically to the issues determined by this Panel. It respectfully refers the parties to that prior Award for additional findings on the nature of the work, the services provided to the community, the history of parity with Police, comparability with paid firefighters in other cities, the financial ability of the City to fund increases, and the economic status of the area.

The peculiarities of the profession include the extraordinary hazards of fire fighting. Studies, reports, and testimony established a number of points well known to the parties but worth reiterating. While firefighters do not risk their lives on a daily basis, when they are called upon to do so, they risk injuries and death from exposure to chemicals as well as from the hazards of fire fighting. The occupation is rated in the Dictionary of Occupational Titles as one that requires performance in a "very heavy work environment." This Panel considered the essential nature of the job as well as the peculiar characteristics in determining that the Firefighters are essential to the safety of the community and deserve a reasonable increase in recognition of the services performed.

In addition, Niagara Falls firefighters perform the duties of Emergency Medical Technician. Approximately half of the one hundred firefighters are licensed EMTD's and any new hires must become certified. Recertification is required every three years. The present contract provides a \$350 payment upon certification and a \$350 payment upon recertification. The prior Award gave an additional \$100 per year. This Panel is impressed by the data and testimony about lives saved by the Firefighters who perform this additional service as an integral and required part of the job. The duty warrants some increase in compensation that is functionally related to salary. Therefore a percentage is being awarded rather than the lump sum payment of \$100 per year.

Firefighters in other communities used for comparative purposes by the parties do fare considerably better than those in Niagara Falls, with the exception of Utica. The gap exists when the cities are compared in terms of base salary, where the gap as described by the Association appears to be about 6% for 1994. The Association sees the difference in salary plus longevity for the average five year firefighter as an 8.5% difference. The City agrees Niagara Falls firefighters lag, but claims the overall difference was only 2.4% at the end of 1993. The City correctly points out that the figures are not pure comparisons because of the difference in other benefits. That fact is balanced against the fact that the discrepancy exists between the Niagara Falls firefighters and those in other cities, no matter what is included in the comparison. The Panel realizes that differences will exist, depending on the unique circumstances in each community, but took the lag into account in determining there was justification for some increase in compensation.

The Panel also is cognizant of the history of parity in compensation between firefighters and police officers, not only in Niagara Falls but in other communities in the state. That history of parity in Niagara Falls has been breached in the last five years, leaving the firefighters behind their uniformed counterparts in the police force. While the City is correct in pointing out the differences in requirements and scheduling and the concomitant difficulties of a point for point comparison, the Panel also believes the services performed for the public by the uniformed forces who protect them deserve equal respect and consideration in the municipal budget. For 1994 a 6.9% increase would be needed to eliminate the gap in base salary, while 7.7% would be needed to match total compensation. The Panel cannot eliminate the total gap, but the Award does take this factor into account in determining reasonable increases.

The ability of the City to fund reasonable adjustments in compensation was of major importance in the deliberations of the Panel. We agreed that some increases were possible. The City has a relatively weak economy as compared to other cities in the state, but it is gradually improving as job loss declines. The City does have an aging and poor population, but the recent administration has dealt with the accumulated deficits. The City may still have a structural imbalance, but there exists sufficient ability to fund this Award, because borrowing is possible, and the 1995 budget does not show a deficit. Most significant, for this Panel's consideration, is the fact that the

City was able to fund increases in compensation for 1995-96 for the other bargaining units representing uniformed services. This unit should not be the only one to be denied.

Yet, the City's need to minimize the cost of those increases in a way that does not actually reduce the benefit to the employee was recognized in those other settlements with the units' agreements to waive the benefit of the vacation cash conversion. Increases in compensation for the Police Officers, the Police Club, and the Fire Brass were accompanied by the agreement to waive the conversion of vacation weeks to cash. The City estimates the cost of vacation cash conversion as approximately \$433 per firefighter. The Panel accordingly decided that this unit should be treated the same.

AWARD:

SALARY:

Effective 1/1/95, a lump sum payment of \$1500 per firefighter on the payroll at that time.

Effective 12/31/95, a 4% adjustment to base and longevity (i.e. the salary schedule).

READY PAY:

Effective 1/1/94, ready pay of three hours per pay period.

Effective 1/1/95, one additional hour of ready pay per pay period for a total of four hours per pay period.

EMT/D AND CFRD:

Effective 1/1/95, EMT/D's receive .75% of base and longevity, payable in January of each year.

Effective 1/1/95, CFRD'S receive .33% of base salary and longevity, payable in January of each year.

These percentage awards shall replace the lump sum payment of \$100 per year.

SHIFT DIFFERENTIAL:

Effective 1/1/95, shift differential to be .50 cents per hour.

VACATION CASH CONVERSION:

Effective 1/1/95, vacation cash conversion will be waived for 1995 only, Subsequent contracts between the parties will contain the vacation to cash conversion clause, as is in the present contract, unless specifically negotiated

to waive such clause. A separate "special vacation bank" will be created for the placement of up to four weeks vacation from a members 1995 allotment. The weeks placed in the "Special vacation bank" can be sold back to the city one week at a time in future years, in addition to the terms of the previous contract clause. Firefighters leaving the force will receive any balance due for all unused weeks that were placed in either vacation bank."

The terms of this award must be satisfied no later than 30 days from the date of receipt of this Award.

Mona Miller 5/23/95

MONA MILLER

DATE

PANEL CHAIR

Thomas C. Lizardo

THOMAS C. LIZARDO

DATE

PUBLIC EMPLOYER PANEL MEMBER

Richard L. Horn 08/23/95

RICHARD L. HORN

DATE

PUBLIC EMPLOYEE/ORGANIZATION PANEL MEMBER

STATE OF NEW YORK)
COUNTY OF MONROE) SS.:
CITY OF ROCHESTER)

I, MONA MILLER, do hereby affirm upon my oath as Panel Chairman
that I am the individual described in and who executed the within
Arbitration Award on August 23, 1995.

Mona Miller
MONA MILLER
PANEL CHAIR

STATE OF NEW YORK)
COUNTY OF NIAGARA) SS.:
CITY OF NIAGARA FALLS)

I THOMAS C. LIZARDO, do hereby affirm upon my oath as Public
Employer Panel Member that I am the individual described in and who
executed the within Arbitration Award on August 23, 1995.

Thomas C. LizarDO
THOMAS C. LIZARDO
PUBLIC EMPLOYER PANEL MEMBER

STATE OF NEW YORK)
COUNTY OF NIAGARA) SS.:
CITY OF NIAGARA FALLS)

I, RICHARD L. HORN, do hereby affirm upon my oath as Public
Employee/organization Panel Member that I am the individual described in
and who executed the within Arbitration Award on August 23, 1995,
1995.

Richard L Horn
RICHARD L HORN
PUBLIC EMPLOYEE/ORGANIZATION PANEL MEMBER