

State of New York  
Public Employment Relations Board

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Impasse between

City of Cortland

and

Cortland Paid Firefighters Association

No. IA95-010; M95-012

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NYS PUBLIC EMPLOYMENT RELATIONS BOARD  
**RECEIVED**

APR 04 1997

**CONCILIATION**

Decision and Award of Interest Arbitration Panel

Before:

Robert J. Rabin, Public Arbitrator and Chair  
Andrew J. Damiano, Public Employer Panel Member  
John Rice, Employee Organization Panel Member

Procedural Background

This Panel was designated by PERB on October 18, 1995 to hear and determine this dispute. The Panel held hearings in Cortland, N.Y. on November 20, 1995 and February 16, 1996. The Panel considered the extensive data, testimony and arguments presented by the parties at the hearing and in their briefs. In the interests of brevity, only the most critical of these materials are summarized in this Decision and Award. The Panel met to discuss these materials, and reviewed drafts of the proposed decision. In arriving at this Decision and Award, the Panel has followed the statutory considerations set forth in Section 209.4 of the Civil Service Law.

The previous agreement between the parties expired on December 31, 1994. The parties began their negotiations for a successor agreement in the latter part of 1994, but most of the intensive bargaining took place in the early part of 1995. The Association filed its Petition for Interest Arbitration on May 26, 1995. The City responded with a charge that certain of the proposals submitted to arbitration were nonmandatory subjects of negotiation. The parties agreed that the interest arbitration would proceed while that issue was resolved. PERB issued its decision on the scope of bargaining on February 9, 1996, and found certain of the Association demands mandatory subjects of negotiation. This Panel considers those issues in its decision.

The Panel's decision covers a two year contract period, for calendar years 1995 and 1996.

### The Central Issues in this Dispute

The central issues in this dispute are economic. The Association seeks a salary increase of 4% in 1995 and 4.25% in 1996. These figures are the same as the salary increases received by the Cortland police officers for the same contract period. The Association also seeks other economic benefits, which will be discussed later. The Association relies on data that compares its economic benefits with those of firefighters in comparable municipalities, and argues that its salary demands are necessary in order to keep pace with salaries of firefighters in these other units. However, the Association says that the most compelling comparison is with the increases of the other uniformed service in Cortland.

The City responds by pointing to a rapidly declining economic base, and to economic considerations that warrant a much lower salary increase than received by the police officers. The City contends that these conditions were not as dire when the City reached agreement with the police unit, and that different economic times warrant different settlements. The City also disputes the Association's contention that the increases for the two units should necessarily be the same. Finally, the City argues that the relevant comparison municipalities are somewhat different from those relied on by the Association, and that within that set of comparison figures, the Cortland firefighters do not need as much of an increase to keep pace. The City offers increases of 2% in each year of the two year agreement.

The positions of the parties raise sharply the factors that the Civil Service Law, in Section 209.4 (v), requires this Panel to consider. The Association's case is built largely on factor (a), which calls for

"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 and under similar working conditions and with other employees generally in public and private employment in comparable communities."

Quite naturally, the Association argues that the police settlement, involving employees performing similar services, with similar skills, and in an obviously comparable community, is the most compelling comparison. The Association garners support for this position from factor c, which calls for

"comparison of peculiarities in regard to other trades or professions,

including specifically, (1) hazards of employment; (2) physical qualifications; (3) educational qualifications; (4) mental qualifications; (5) job training and skills."

This suggests that the comparison with the police unit is particularly relevant. Finally, the Association's position is also supported by factor d, "the terms of collective agreements negotiated between the parties in the past . . . ." Here the Association points to the fact that historically the firefighters' settlements have paralleled those of the police officers.

The City, on the other hand, bases its case largely on statutory factor b:

"The interests and welfare of the public and the financial ability of the public employer to pay."

### Organization of Decision and Award

The Panel will first deal with the City's position that the City has suffered a severe economic reversal since it reached its settlement with the police unit. The Panel will then consider the Association's contention that despite this declining economic situation the firefighters should be awarded a contract that is substantially similar to that of the police unit. Finally, the Panel will present its conclusions and award.

### The City's Economic Situation

No doubt the City of Cortland faces difficult economic times.

#### *Sale tax revenues*

First, the City has suffered a severe loss of sales tax revenues. The City relies heavily on this income stream, which had actually gone up for a couple of years before these negotiations. The City based its current budget on a projection that the sales tax revenues would continue at that level. The actual results were quite disappointing, with revenues falling some \$400,000 below what was expected.

Meanwhile, the City had made a new tax collection arrangement with the County in which the County collected all the taxes and turned 18% over to the City. The City correctly estimated that this formula would be more beneficial to it than the old system, in which the City tended to keep only about 16% of the sales tax revenues. The City was right about the new formula, but the actual sales taxes were much lower than projected.

City Exhibit 10 shows solid increases in sales tax revenues in 1993 and 1994, followed by a 2.2% decrease in 1995, or a shortfall of almost \$400,000.

### *Fund balance*

Second, the City has been tapping its Fund Balance for the last few years. It started out well over a million dollars, which was somewhat above the recommended norm. Now it is down to about \$100,000. The City has for the last few years applied about \$300,000 or \$400,000 of the Fund Balance to the next year's budget. It says it has used this to "stabilize the tax rate." What this really means is that some of what is in the bank is used to fund operating costs the next year. The City took the position that since this is taxpayer money, it should be used to benefit the taxpayer, hence plowed back into the budget. That worked well in the earlier years. But the City must also keep a minimum fund balance for contingencies. The City calls it a rainy day fund. That is a fair enough description, and we saw plenty of examples in the hearing that justify maintaining such a fund, such as needing to replace road salt that was depleted during a hard winter. However, a Fund Balance of that magnitude is no longer on hand.

This means that the City can no longer continue the cycle of using a surplus to fund the next year's budget. In fact, it really needs to go the other way. Put starkly, no money can come out of the Fund Balance to start fiscal 1996, and none is included in the 1996 budget. This means that if expenditures and revenues in 1995 remain exactly the same for 1996, the City has to raise another \$400,000 just to make up for the Fund Balance item that will no longer be part of the budget base. This means a tax increase of 12% even if nothing else changes.

The Association criticizes the City for taking this course, saying that if tax increases had been higher over the past few years, the City wouldn't be in this pickle of using up all its reserves. This of course assumes that the City hasn't set its tax rates high enough, a point we come to shortly. But the Association's argument really supports the City's point. One way or another, revenue over the years has not kept pace with expenditures, and the City now has to look to other sources. Real property taxes can only support so much of the budget burden, whether the increases come now or in earlier years.

City 18 traces the declining Fund Balance over the last few years, from a high of about \$1.5 million to the current figure of slightly over \$100,000. City 16 shows where the previous year's fund balance went, while City 3 shows that the "appropriated fund balance" carried into the previous two years' budgets, but not available for 1996, has been around \$375,000. Association Exhibit C shows the same pattern.

### *State Aid*

Third state aid is no longer what it was. When voters call for lower costs of state government and lower state taxes, they have to pay a price. The City will suffer a \$100,000 reduction in state aid. See City 20.

### *Income and Expenses*

Fourth, there are the usual fluctuations in expenses and income that are not balancing out as expected. There were unusual expenses because of a rough winter. Two of the largest employers, SUNY Cortland and the Cortland Memorial Hospital, are in financial trouble and downsizing, partly because of the decline in state aid. This means fewer purchasers of goods, and lower sales taxes. City 14, 15 and 20.

### *Real Property taxes*

Finally, the one route that might be open to the City is not realistic. The City can lawfully continue to raise real property taxes. But the City must face reality. The evidence shows that the per capita income in Cortland will not support unlimited property taxes. For example, the average family has a per capita income of \$20,000 (the individual per capita income is \$10, 879), while the average yearly property tax is about \$2,200. This figure would go up to 20% of income if the City taxed at the limits of its Constitutional authority. This paints a discouraging picture as to the ability to increase revenues through real property taxes.

The data showing these comparisons is found in City 6 and City 39. City 39 and City 40 show that Cortland has made reasonable taxing efforts in comparison with cities with similar economic factors. Compare Association Exhibit C.

### *Summary of economic factors*

All of this points to a dreary cycle that is moving ever downward. The decline in sales tax revenues of course reflects lower sales, which may require laying off those who work in those stores. Those people in turn can't buy goods, let alone pay taxes. So the sales tax revenues decline even further. It is not in anyone's interests to further this cycle.

If the City cannot realistically raise revenues, its options are limited. The City continues to look into possible operating economies. Wages make up the bulk of the City's expenditures, some 66%. It can cut back or consolidate services, thus reducing payroll. There is no suggestion that this is a feasible course for fire protection. The

firefighters have already been reduced from 43 to 34 employees.

The City has put a 2% wage increase on the table for this unit. 2% would not keep firefighters apace with the cost of living. Nor would it enable them to keep up with the salaries in comparable cities. The Panel will not summarize here the various salary comparisons placed in evidence by the parties (e.g. Association Tables IV and XIII in its brief). No matter what comparison is used, salaries for Cortland fire fighters fall in the middle range.

The City says that people are eager to work as firefighters at even a lower salary rate. However, the worth of a firefighter can't be set by what price people are willing to take to perform a job. Using that standard, wages would be very low indeed. The premise of the system of collective bargaining is that workers in isolation are victims of the market, and that collective action is needed to equalize market positions. In the public sector, the Panel is instructed to look at relevant comparison salaries to determine a fair wage.

If these were the only considerations, the Panel would be quite supportive of the City's position. However, there are other factors, to which we now turn.

#### Comparisons with other Cortland units

Historically the firefighters have had the same salary levels and have received the same wage increases as police officers in Cortland. The salary levels and benefits aren't precisely the same, nor can they be, because of different items that go into the compensation package in each unit. But the salary levels and percentage increases have been very similar over the years. This means that historically the City has valued the contributions of these two forces as roughly the same.

Both the police and fire contracts expired in 1994. The police settled quickly, for increases of 4% and 4.25% for 1995 and 1996, and for a 4.5% increase for 1997. The firefighter negotiations began after the police settlement was reached. The employee union and City Panel members, who were involved in the negotiations, assert that long and difficult sessions were spent in trying to resolve complicated issues.

The City says that when it settled with the police it had no idea that the sales tax revenues would falter in the months ahead or that the other crises that it now faces would materialize. The Association says the downward trend had begun, and if the City experts had opened their eyes they would have seen what was coming.

This debate misses the point. Negotiators on both sides must understand the relationship of salaries of different groups within the City. When the two uniformed groups are historically paid the same, legitimate expectations arise. A firefighter who

chooses to make his career in Cortland is led to understand that the City values his services, and it pays its uniformed employees adequately and in roughly the same range. When the City settles with the police, it generates expectations in the other units. Indeed, the Taylor Law provisions cited earlier suggest that the police and fire comparisons within the City may be the most critical of the comparison factors.

The City's position that economic times have changed is undermined by its settlement with the SEIU unit. This settlement, less than a month before this hearing closed, was reached in January, 1996, when the City understood fully its dire position. Yet the City committed to the exact same increases, 4% and 4.25%, that it paid the police. On the other hand, the City secured economic relief in other areas, including an increase from 9% to 10% in the employee's share of health insurance premium costs.

The City argues that this was a much less costly overall settlement, because fewer employees are involved and their salaries are lower. But by settling at these percentages, the City is telling the rest of its employees that despite economic constraints it wishes to continue to give them decent wage increases. The Taylor Law does not say that fairness of increases depends on the size of the unit. It would be a topsy turvy world if the highest increases went to those in the smallest units.

The City also gave its managers the same increase in 1996. The evidence doesn't show the aggregate costs of these increases, but we can assume that these are higher paid employees than those in the SEIU unit.

The point is the same. The City acknowledges that despite the severe financial constraints, it will pay decent salary increases. There was no evidence by the City that the increases in any of the other three units mentioned were pushed by glaring inequities. Further, by giving employees in both units the same 4% and 4.25%, the City further acknowledged its willingness to let the police settlement set the pattern, even for the non-uniformed units.

The City makes much of the Chair's interest arbitration award in Elmira, in Case IA91-038. In that case the Award gave less weight to settlements in different cities that had been reached two to three years earlier, in a different economic and negotiating cycle. While the principle of that Award is valid, it has much less force when two units in the same municipality negotiate for the same contract period.

The City also argues that the union's position falls into the forbidden area of a demand for parity. But that is not the case. The PERB decisions condemn situations where one unit seeks a contractual commitment that if another unit's wages increase, theirs increase automatically. But in this case the firefighters do not ask for a formula that will guarantee future increases. The firefighters simply ask for a continued

recognition of the historical acknowledgement that the two uniformed units are entitled to roughly the same economic treatment.

Until these negotiations moved into the interest arbitration stage, the City never questioned the historical parallel between the economic packages of the two units. It never took the position in negotiations that the nature of the firefighters' work called for a lower salary or wage increase than for the police officers. The City offered data that police are paid more than firefighters nationwide. However, this should not control the practices in the City of Cortland. While the City also offered nationwide data as to hazards and of death rates faced by police and fire officers, none of that data compares the risks and hazards encountered by the two uniformed groups in the Cortland area.

### Conclusions of the Panel

The Panel concludes that while the City's offer properly reflects current economic conditions, it does not adequately take into account the settlements with the police officers and in the other units. While not all the economic downturns could have been foreseen at the time of the police settlement, the City knew that the economy was precarious, and that whatever settlement was reached would serve as a model for later settlements.

On the other hand, the Panel acknowledges that the City faces a dire economic situation and must have some relief. These negotiations took considerably longer than the police negotiations, and the reality is that the current economic situation cannot be ignored when the time comes to finalize the agreement.

The Panel concludes that the salary increase for 1995 should be 4%, the same as negotiated in the police officers' unit. However, that figure, combined with the still higher figure of 4.25% for 1996, would put the City under a severe financial strain in the current fiscal year. Further, a 4.25% increase for 1996 would leave no room for other economic adjustments the Panel thinks are fair and warranted as part of the overall contract.

In light of these considerations, the Panel awards a salary increase of 3.5% for 1996. The Panel also awards certain other economic adjustments, described below. It is difficult to calculate precisely the cost of these additional economic adjustments, because some of them depend on how many members of the bargaining unit take advantage of the benefit. The Panel concludes, however, that the 3.5% salary increase, together with the additional economic adjustments that are part of the Award, would make this economic package roughly comparable to that of the police officers. Some of the economic improvements that are part of this award are benefits that accrue to firefighters later on, for example, upon retirement. These are part of the value of the economic package to the firefighters for 1996, but they will not have to be absorbed by

the City until later years. Without that deferral of economic benefits, the Panel might have postponed a portion of the salary increase to a later date, to enable the City to prepare for its impact.

#### Other Economic Items and Other Issues

In light of the considerations discussed above, the Panel makes the following Award on the remaining issues. The Panel's overall approach is to keep within the economic confines discussed above. With respect to several non economic items, the Panel took advantage of the expertise of the two Panel members who had been involved in negotiations, and who were able to amplify the rationale and practical significance of each of these items. The Panel concludes that in many situations the proposed change provides a benefit for both parties, and should be included in the contract as a mutual gain.

The Panel rejects some of the Association's demands as too costly. In particular, the request for longevity payments would be the equivalent of more than a half percent wage increase, pushing the economic package well beyond the limits we have found economically feasible.

We keep our explanation brief. Items not covered in this Decision and Award are treated as though they were withdrawn from the bargaining table, and are not part of the Agreement.

1. Benefits for new hires. Costs can be deferred by having a lower entry rate for new firefighters and a higher contribution rate for the health insurance premium (and a corresponding lower cost to the City), and fewer sick days. The Panel awards that for persons hired after 7/1/96:

A. The entry level salary for firefighters shall not be adjusted by the salary increases awarded herein and shall remain the same for the length of the contract.

B. New hires shall contribute at the rate of 15% of the health insurance premium.

C. New hires shall receive the following number of sick days:

First year: 12 days

Second year: 12 days

Third year: 15 days

Fourth year and thereafter: 18 days.

2. Health Insurance. The City seeks some relief from the rising costs of health insurance. This is a valid concern given the fiscal picture. The City obtained

concessions on this score when it increased the employee's contribution to 10% in the SEIU unit; the City also imposes a 10% employee contribution in the CSEA unit. Therefore, the health insurance contribution for all members and retirees hired prior to 7/1/96 shall be 10%, effective 7/1/96, with the exception of retirees who have earned fully paid health insurance coverage.

3. The Association seeks to accelerate an employee's opportunity to sell back sick days in order to obtain the health insurance coverage that is available for retirees. This is a valuable benefit for retirees, and has the potential for enhancing early retirement, thus resulting in savings to the City. Therefore, the City will provide fully paid health insurance coverage for life for retirees who sell back 275 sick days by no later than December 31, 1996. For those who retire after December 31, 1996, said coverage will be provided if 300 sick days are accumulated prior to retirement. This is an improvement for firefighters from 325 days, and enhances their position upon retirement.

4. The Association seeks some compensation for firefighters called in to do Code Enforcement Work. The Panel agrees. Firefighters participating in the Code Enforcement Program who voluntarily agree to be called in to do Code Enforcement work while off duty from their rotating shift, shall be paid at the rate of one and one-half times their hourly rate for each hour worked, with a minimum three (3) hour call back.

5. The Association seeks to upgrade the uniform allowance, and will agree that each unit member is responsible for his own linens. This increase brings firefighters more in line with comparable cities. Therefore, the uniform allowance shall be increased by \$25 beginning with the 1996 contract year. Effective 7/1/96, bargaining unit employees shall provide their own linens.

6. The Association seeks an upgrade in Acting Captain's pay, an adjustment warranted to keep pace with the increase in Captain's pay. The increases shall be as follows:

Effective 1/1/95: \$.06 per hour (fully retroactive)

Effective 1/1/96: \$.05 per hour (fully retroactive)

7. The Association seeks a provision providing for indemnification if a member is sued. Since this is already the policy of the City, and appears to be required by law, the Panel awards that members of the bargaining unit shall be provided legal representation pursuant to Public Officers Law Section 18.

8. The Association has raised concerns about the hazards of communicable diseases. These concerns are legitimate and should be acknowledged by language developed by the parties to the effect that all employees in the unit shall be guaranteed the rights, privileges, and protection afforded them within the guidelines of the current City of

## Cortland Exposure Control Plan.

9. Firefighters work a longer than 40 hour week, given the unique method of scheduling. That excess time is usually converted into compensatory time off to avoid overtime expenses. The current agreement provides that these accumulated days may be converted into cash. The Association makes a reasonable demand to extend this benefit to Code Enforcement Personnel. Therefore, effective 1/1/96 the Code Enforcement Officers shall have the same treatment as other firefighters with respect to use of DT time off.

10. The Panel awards a modest expansion of the situations where bereavement pay shall be allowed, extending the coverage to include mother and father in law, son and daughter in law, and grandparents of spouses.

11. The City currently provides for a uniform allowance. The City makes the reasonable demand that this allowance be prorated on a monthly basis in the event a firefighter's employment is terminated prior to working the entire year, and Article XIII, Section 10, should be amended to incorporate that provision.

12. The Association requests new provisions for "cafeteria" benefits and for retirement benefits. These requests have tax benefits to both the City and the employees, and impose no significant cost benefits upon the City, as long as the burden of administration remains minor, as it appears it will be. Therefore the City shall enact an IRS 125 Program and a Deferred Compensation Plan prior to December 31, 1996 for members of the bargaining unit. The President of the Association or his designee shall assist the City in formulating such a program.

13. Some members of the unit also enjoy duplicate health insurance coverage through other sources, for example, a policy covering their spouse. The City will gain financially if these members can be induced to give up their coverage by the City. The inducement will be a financial benefit to the employee who exercises the election. This benefit shall be increased to \$100 per month for each month the employee opts out.

14. The Association seeks to accelerate eligibility for vacation benefits. This is an important benefit to employees. An enhancement of this benefit is warranted based on the comparisons with other cities. An employee who reaches 10 years of service on his anniversary date in 1996 shall receive four tours of duty off as vacation in 1996 and thereafter. While this demand doesn't increase the unit member's income, it imposes significant additional costs to the City, as it must provide additional coverage through overtime.

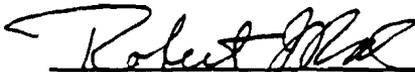
15. The Association seeks a more structured procedure for filling openings in the bargaining unit. The city has made some suggestions to make this administratively

workable. The Panel adopts the Association proposal, incorporating the City's suggestions, as worked out on a tentative basis in negotiations.

16. Both parties make proposals and suggestions to make coverage of Code Enforcement responsibilities more equitable and efficient. The Panel awards that the temporary assignment of Code certified firefighters to the Code Enforcement Office on a non-rotating assignment shall be for no more than 30 consecutive calendar days. The selection of firefighters to till the temporary assignment shall be on a rotating basis, using the Fire Department seniority system (starting with the lowest in seniority to the highest).

17. There is a current vacation sell-back provision. It should be changed to reflect the fact that firefighters work a 10 hour day.

Respectfully submitted,

  
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Robert J. Rabin, Public Arbitrator and Chair

  
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Andrew J. Damiano, Public Employer Panel Member

  
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John Rice, Employee Organization Panel Member

Syracuse, N.Y.  
April 17, 1996