

STATE OF NEW YORK PUBLIC
EMPLOYMENT RELATIONS
BOARD--ADMINISTRATOR

In the Matter of the
Interest Arbitration

between

THE CITY OF COHOES

and the

UNIFORM FIREFIGHTERS OF COHOES
Local 2562, IAFF, AFL-CIO

*
*
* Case No.: IA96-004
* (M95-269)
*
*
* OPINION
* and
* AWARD
*
* 1995-1997
* Contract
*
*
*

Dates Of Hearing: May 28, 29 and 30, 1997

Location of Hearing: Albany, New York

Before a Tripartite Panel:

ELAYNE G. GOLD, Esq. - Employer Member
JANE K. FININ, Esq. - Employee Member
CHARLOTTE GOLD - Chairperson

APPEARANCES

For the City

LIESL K. ZWICKLBAUER, Esq. - Attorney

For the Union

JOHN V. CREMO, Esq. - Attorney

Date of Award: November 15, 1997

NYS PUBLIC EMPLOYMENT RELATIONS BOARD
RECEIVED

JAN 05 1998

CONCILIATION

By notice dated February 5, 1997, a Public Arbitration Panel was established for the purpose of making a determination in the interest arbitration dispute between the City of Cohoes and the Uniform Firefighters of Cohoes over the terms of their 1995-1996 Collective Bargaining Agreement. On February 7, 1997, the undersigned were named as duly designated Panel members.

Hearings were held in Albany, New York, on May 28, 29, and 30, 1997, at which time the parties were given the opportunity to present evidence and proof in support of their respective positions. Thereafter, posthearing briefs were submitted on July 7, 1997. The following is the Decision of the Panel pursuant to the provisions of Civil Service Law, Section 209.4 (as amended July 1, 1977), of the State of New York.

In accordance with that statute, the following criteria have been considered in reaching a determination:

- 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.

BACKGROUND

Following efforts to resolve this dispute through direct negotiations and PERB-sponsored mediation, the Union filed a Petition for Compulsory Interest Arbitration. The City filed a Response, together with an Improper Practice Charge in conjunction with the scope of the Union's proposals. In reply, the Union filed the same charge relative to issues raised by the City's Response. A decision was issued by PERB Administrative Law Judge Susan A. Comenzo, which was received by the parties on the first day of the arbitration hearing, May 28, 1997.

Based upon her Findings, the parties modified some of their proposals. They went on to engage in the presentation of proof on several of the issues that were the subject of the charges, but agreed, in accordance with Section 205.6(d) of PERB's Rules, that no decision would be rendered by the Panel on these matters until appeal procedures were exhausted fully. It was the parties' understanding, however, that the Panel would retain jurisdiction and submit a further decision on any open issues, should that be necessary.

As noted by the City in its prehearing brief, the City of Cohoes has a population of 16,825. The Union represents a bargaining unit of forty to forty-four full-time Firefighters, excluding the Chief and Deputy Chief. There are four platoons staffed by approximately eight Firefighters and one Captain. The 1994 bargaining unit base salary for Firefighters ranged from a minimum of \$22,354 to a maximum of \$32,999.68. Captains received \$37,479. The prior Agreement between the parties covered the period from 1991 to 1994. It resulted from a unanimous interest arbitration award for the four-year period.

At the time of arbitration, numerous issues remained unsettled by the parties. Because of the large number, the Panel's rationale may be abbreviated in certain instances in the Decision that follows. All of the evidence and arguments, as well as the statutory criteria, have been considered, however, in each instance. In the Union's proposals, underlined sentences represent suggested additions to the Contract.

By written agreement of the parties, the Panel's jurisdiction was extended for an additional year, through 1997.

* * *

ISSUE #1

DISCIPLINARY ACTION, Article IX

• City Proposal No. 4:

Article IX, "Disciplinary Action" at paragraph B (p. 5-6) shall be amended by deleting same in its entirety and replacing with the following:

Disciplinary Procedure shall be that articulated in Section 75 of the Civil Service Law.

The parties agree to the following modification:

Article IX, Section B.1, 2 and 3 shall be deleted and replaced with a new Section B to read: "The disciplinary procedure shall be that which has been established pursuant to Sections 75 and 76 of the Civil Service Law, except that the procedure providing for the designation of the hearing officer in Section 75(2) of the CSL shall be replaced with the following provisions: 1. The hearing officer shall be mutually selected and agreed upon by the parties. If unable to agree, the matter shall be referred to PERB and the PERB rules for selection of the arbitrator shall be followed:

DECISION:

This change will be included in the new Agreement.

ISSUE #2

GRIEVANCE PROCEDURE, Article X

• City Proposal No. 7:

Article X, "Grievance Procedure" at paragraph B, Step 3.2 (p.6) shall be amended by deleting same in its entirety and replacing with the following language:

Arbitration will be invoked by written notice to the other party of intention to arbitrate. The rules of the New York State Public Employment Relations Board shall control.

DECISION:

Incorporate in new Agreement.

DISCUSSION:

This change enables the parties to utilize a single Arbitrator in grievance arbitration, rather than a three-member panel.

This procedure is more efficient and less time consuming. It is a common practice in comparable municipalities.

ISSUE #3

- City Proposal No. 8:

Article X, "Grievance Procedure" at paragraph B, Step 3.3, 4 and 5 (p.6) shall be amended by deleting reference to the "Arbitration Board" and replacing it with the word "Arbitrator".

DECISION:

Incorporate in new Agreement.

DISCUSSION:

The same reasoning as in City Proposal No. 7 applies.

ISSUE #4

WAGES AND ECONOMIC PROVISIONS: WAGES, Article XI, Section A

- Union Proposal No. 1:

Amend as follows:

1. The base wage or salary schedule, including in grade annual increments, for members of the Department hired prior to January 1, 1994 shall be as set forth in Appendix B which is attached hereto and made a part hereof.

- Union Proposal No. 2:

2. The base wage or salary schedule including in grade annual increments, for members of the Department hired on or after January 1, 1994 shall be as set forth in appendix C which is attached hereto and made a part hereof.

DECISION (Union Proposals No. 1 and 2):

Accept.

DISCUSSION:

The Union points out that these additions to Article XI merely clarify an ambiguity resulting from the prior interest arbitration decision.

ISSUE #5• Union Proposal No. 3:

3. Delete: Effective January 1, 1994 base salary for new employees is \$22,500 and five years to top grade and add: All members with EMT certification shall be paid an annual increment of \$1,000.00 in addition to their regular salaries.

DECISION:

Reject.

DISCUSSION:

The Union notes that EMT certification constitutes a unilaterally imposed requirement for new Firefighters and Captains. It argues that additional compensation is warranted. While there is evidence that other jurisdictions provide such compensation (viz., Glens Falls, Albany, Watervliet), it is also recognized, as Management maintains, the City's resources are not unlimited. In general, throughout this Award, a decision has been made to concentrate the economic increase for 1995-1996 in the wage area where the impact will be more widespread. (See Decision and Discussion on Wages.) Should the parties elect voluntarily to extend this agreement for an additional two years, it is recommended that \$500 be paid in 1997 and that this figure be raised to \$1,000 in 1998.

ISSUE #6WAGES AND ECONOMIC PROVISIONS: LONGEVITY ALLOWANCE,
Article XI, Section B• Union Proposal No. 4:

Alter as follows:

Effective on January 1, [1985] 1995 members of the Department will be paid a total annual longevity increment as follows:

For the first five year period of service	[\$270.00]	<u>\$500.00</u>
For the first ten year period of service	[\$445.00]	<u>\$700.00</u>
For the first fifteen year period of service	[\$620.00]	<u>\$1,000.00</u>
For the first [twenty] <u>nine-teen</u> year period of service [and thereafter]	[\$820.00]	<u>\$1,500.00</u>
<u>For the first twenty five year period of service and thereafter</u>		<u>\$2,000.00</u>

Effective January 1, 1996 all longevity increments shall be increased by \$150.00.

Such allowances shall become effective as of the anniversary date of the employee's appointment and shall be payable in a lump sum on the employee's anniversary date.

DECISION:

5 YEARS:	\$ 370
10 YEARS:	\$ 550
15 YEARS:	\$ 750
19 YEARS:	\$1000

DISCUSSION:

The Union relies on the following data to support its position:

1955 LONGEVITY

<u>CITY</u>	<u>5YRS</u>	<u>10YRS</u>	<u>15YRS</u>	<u>19YRS</u>	<u>20YRS</u>	<u>24YRS</u>	<u>(K)</u>
Albany	\$1350	\$1550	\$1800	\$1800	\$2100	\$2100	(94-97)
Amsterdam		\$ 150	\$ 150	\$ 450	\$ 450	\$ 450	(96)
Glens Falls		\$ 500	\$ 500	\$ 500	\$ 500	\$ 500	(95)
Gloversville	\$ 375	\$ 500	\$ 625	\$ 725	\$ 750	\$ 750	(95)
Johnstown	\$ 500	\$ 600	\$ 700	\$ 700	\$ 800	\$ 800	(97)
Saratoga	\$ 350	\$2968	\$3268	\$3568	\$3568	\$3568	(96)
Schenectady	\$ 725	\$ 975	\$1875	\$2575	\$2575	\$2575	(96)
Troy	\$ 550	\$ 750	\$ 950	\$1500	\$1200	\$1300	(96)
Watervliet	\$ 100	\$ 600	\$1100	\$1500	\$1600	\$2000	(96)
Total	\$3,950	\$8,593	\$10,968	\$13,318	\$13,543	\$14,043	
Average	*\$ 439	\$ 955	\$ 1219	\$ 1480	\$ 1505	\$ 1560	
Cohoes	\$ 270	\$ 445	\$ 620	\$ 620	\$ 820	\$ 820	
Difference:	-\$ 169	-\$ 510	-\$ 599	-\$ 860	-\$ 685	-\$ 740	

Cohoes

Proposed (1995):	\$500	\$700	\$1000	\$1500	\$1500	\$2000	(25YRS)
Proposed (1996):	\$650	\$850	\$1150	\$1650	\$1650	\$2150	(25YRS)

* = Average includes those departments which pay no longevity at 5 years (Amsterdam and Glens Falls).

As the City notes, a number of these figures are not for 1995, but rather for 1996 and 1997. It also points to inaccuracies in the figures for Saratoga. While these corrections are undoubtedly warranted, a comparative analysis suggests that some adjustment is warranted.

ISSUE #7

WAGES AND ECONOMIC PROVISIONS: OFFICER REPLACEMENT AND OUT-OF-GRADE ASSIGNMENTS, Article XI, Section C

• Union Proposal No. 5:

6. Captains, including a senior man on the platoon in charge of the platoon as provided for herein, shall not be assigned as drivers, tillermen, [or] pump operators, [but may be used as] or hosemen, [if necessary]. The captain, including a senior man on the platoon in charge of the platoon as provided for herein, is the officer in charge of the platoon].

DECISION:

Reject.

DISCUSSION:

The Union has failed to provide a compelling basis for its contention that Captains should be relieved of Hosemen's duties. The City maintains that if this change is granted, it would be necessary to increase the number of Firefighters in each platoon by one. Although it is not clear that that would be the necessary result, there is no evidence that this one remaining Firefighter function is so onerous as to place an undue burden on Captains.

ISSUE #8

WAGES AND ECONOMIC PROVISIONS: OVERTIME AND CALL-BACK,
Article XI, Section D

• City Proposal No. 13:

Article XI, Section D.9(h) (p.10) shall be amended to read as follows:

If a firefighter is improperly denied overtime due to an error, his remedy shall be the right to the next available opportunity to work overtime. The City shall not be made liable through any process or award for the payment of overtime to any firefighter due to such an error.

DECISION:

Reject.

DISCUSSION:

The Union argues that the parties agreed on the current language of this provision and that any change should come about as the result of bargaining. The City contends that it should not have to be responsible for any error made by a rank and file member or a Dispatcher. Under the current language of the Agreement, the responsibility for ensuring that there are no errors in assigning overtime or omissions on the rotation list lies with supervisory personnel. There is no sound managerial reason for relieving Supervisors, who are responsible for both oversight and proper training, of that obligation.

ISSUE #9

• City Proposal No. 13A:

Article XI, Section D.9.j (p.10) shall be amended to clearly spell out the Captain's overtime procedure.

DECISION:

The parties should meet to memorialize the present procedure for Captains' overtime.

DISCUSSION:

There is agreement that the current procedure is acceptable, but that it has not been put into writing. Should there be disagreement on any of the details, this Panel shall retain jurisdiction to settle the matter.

ISSUE #10

• Union Proposal No. 6:

Article XI, Section D.9.a (p.9) shall be amended as follows:

Firefighters will be asked according to their place on an overtime rotation list whereby the firefighter with the least amount of overtime worked (defined as the lowest number of hours on the overtime wheel, which shall include all compensatory time earned) will be given the first opportunity to work overtime provided that he is qualified for the position to be filled as determined by the Chief or the officer in charge.

DECISION:

Incorporate in new Agreement.

DISCUSSION:

An agreement is in place to put all overtime, including compensatory time, on the overtime rotation wheel. The additional language clarifies that understanding.

ISSUE #11

- Union Proposal No. 7:

Article XI, Section D, shall be modified as follows:

10. Members who are called to fill 24 hours vacancies on an overtime basis shall have the option of accepting 12 hours only at the time of the call.

DECISION:

Incorporate in new Agreement.

DISCUSSION:

The Union suggests that this proposal to split overtime and night work in half at the Firefighter's option benefits the Department as a whole. It is unlikely that this proposal would place an undue burden on Management and is therefore granted. Should it prove difficult to meet manning requirements, however, this provision may have to be reviewed.

ISSUE #12

- Union Proposal No. 8:

Section E is to be modified as follows:

Effective January 1, 1995, every firefighter will receive an annual allowance for clothing in the sum of [Two] Three Hundred Fifty

~~[(\$250.00)]~~ (\$350.00) Dollars which shall be paid by the City no later than March 31st each year. Effective January 1, 1996, every firefighter will receive an annual allowance for clothing in the sum of Four Hundred Fifty (\$450.00). Without chargeback, each member shall receive an additional ~~[Eighty-five (\$85.00)]~~ One Hundred Twenty five (\$125.00) Dollar cash clothing maintenance allowance to be paid on or before June of each calendar year. In addition and without chargeback to the annual clothing allowance, a newly appointed member of the Fire Department will be equipped with OSHA-approved helmet, coat, boots, and gloves at the expense of the City, and will receive a clothing allowance as above stated pro-rated for the period of his first year of employment. It is further agreed the employee's fire gear (coat, boots, helmet and gloves) will be replaced as needed at the expense of the City. In addition and without chargeback to clothing allowance, all firefighters shall be provided with a complete change of protective clothing as needed.

DECISION:

Reject.

DISCUSSION:

Combining the clothing and maintenance allowance, Firefighters receive \$335 a year. While this amount is less than the total amount received by Cohoes Policemen, clothing expenses for Police personnel are higher. Given that the present rate falls within the mid range of comparable municipalities, the present allowance shall be retained.

ISSUE #13

WAGES AND ECONOMIC PROVISIONS: HOLIDAYS, Article XI,
Section G

• City Proposal No. 15A:

Article XI, Section G, "Holidays" (p.11) at §2,
shall be amended by adding a new paragraph "e"
to read as follows:

An employee working overtime on a holiday
will receive holiday pay due the platoon
he works overtime on, not the holiday pay
due to his regular platoon.

DECISION:

Reject.

DISCUSSION:

The City argues that a Firefighter should be paid only for the time called in to work. The eight hours he would have received should not be added to the time worked. It maintains that the current policy to pay only once and suggests that this understanding should be spelled out to avoid "double dipping." The Union disagrees with this interpretation.

In the absence of a mutual understanding of this provision, it is inappropriate for this Panel to provide its own "clarification" of the matter. Clearly, more is required in the form of evidence on past practice to substantiate the City's claim here. The current language shall therefore be retained until the matter is addressed further.

ISSUE #14

• Union Proposal No. 10:

Article XI, Section G, shall be modified as follows:

[2]1. All members and employees of the Department will be compensated for each of the following [eight (8)] twelve (12) holidays during the term of the Agreement at the following rate[s:] of eight (8) hours pay in addition to their regular rate or salary, regardless of whether they work or not.

- | | |
|-----------------------|--------------------|
| Memorial Day | Veteran's Day |
| Christmas Day | New Year's Day |
| Easter Sunday | Labor Day |
| Independence Day | Thanksgiving Day |
| Lincoln's Birthday | Martin L. King Day |
| Washington's Birthday | Columbus Day |

[1]2. All members and employees of the Department [will be compensated for each of the following four (4) holidays] during the term of this Agreement at the rate of eight (8) hours pay in addition to regular wage or salary except for firefighters] on the shift who work seventeen (17) hours on any of the above holidays [who] will be compensated at the rate of seventeen (17) hours' pay at the rate of time and one half, in addition to regular salary.

(a) Those on the shift working seven (7) hours on any of the above holidays, will be paid their regular wage or salary plus seven (7) hours' pay at the rate of time and one-half.

(b) [Those working seventeen (17) hours, regular wage or salary plus seventeen (17) hours' pay at the rate of time and one-half.] Members who work on a call back basis shall be paid the holiday rate of time and a half, plus the overtime rate of time and a half, in addition to the 8 hours provided in paragraph 1 above.

[(c) Those off the holiday at regular wage or salary plus eight (8) hours' straight time.]

[(d) No member may take a Kelly day on any of the holidays listed in §1 or §2.]

3. Each member and employee of the Department will have as a day off with pay, his birthday. In the event that the birthday of a member or employee falls on his day off, then he may take off the regularly scheduled work day next preceding or succeeding his birthday. It is further agreed, a member will have the option of working his birthday should overtime be required, and will be compensated at the rate of time and one-half.

DECISION:

Reject.

DISCUSSION:

The Union seeks payment at the time and a half rate for all time worked on holidays, as well as double time and a half for members who work overtime on any of the twelve designated holidays. It offers the following data in support of its position:

1995 HOLIDAY PAY PROVISIONS

<u>CITY</u>	# OF DAYS	RATES	BONUS HOURS
Albany (91-92)	11	Straight	88
Amsterdam	12	Straight	96
Glens Falls	4	ST + (1.5 x 8)	96
Gloversville		Straight	96
Johnstown	10	Straight	100
Saratoga	11	ST + 8 HOURS	88
Schenectady	12	ST x 1.5	96
Troy (1992 only)	12	ST + 16 HOURS	96
Watervliet	12	Straight	96
Cohoes	12	* below	
Cohoes	4 Holidays	FF working 17 hours ST + 17 hrs FF working 7 hours Straight time	
	8 Holidays	FF working 7 hours ST + 7 x 1.5 FF working 17 hours T + 17 x 1.5	
Cohoes: Proposed	12 Holidays	FF working 7 hours ST + 7 x 1.5 FF working 17 hours ST + 17 x 1.5	

ST = Straight Time

The City suggests that the Union's analysis is faulty in regard to Troy, arguing that sixteen hours should be changed to six.

The Union's own data indicates that Cohoes Firefighters fare well in comparison to comparable units. Further, no evidence was provided to support the contention that the current level of benefits serve as a disincentive to work holidays.

ISSUE #15

HOURS OF EMPLOYMENT, VACATION, SICK LEAVE, LEAVE OF ABSENCE, ETC: VACATIONS, Article XII A, Section C

• City Proposal No. 21:

Article XIIIA, Section C.4 (p.15) shall be amended by deleting the current language in its entirety and replacing it with the following:

Captains will select vacations separately from the Rank and File, but in the same manner as the Rank and File; there will be only one Captain off on vacation leave per platoon.

In clarification of this proposal, the City notes the following:

The City's position is that Captains should pick vacations in the same manner as the remainder of the Department, but within their group of Captains only. Selection would be as follows:

- Vacation picks would be by seniority within and among Captains, in December of each year;
- Captains would pick their entire vacation in two rounds, in the same manner as is articulated in the Collective Agreement for Firefighters. The first round pick would include

a two week block, with the second round pick addressing the remainder of time;

- Vacation dates start and finish the same as with a Firefighter vacation leave, as articulated in the Collective Agreement.

DECISION:

Incorporate procedure outlined in City's proposal. Limit number of Captains off at same time to two.

DISCUSSION:

The City, in the form of testimony from Chief Andrew Grisondi was persuasive in its argument that it is placed at a disadvantage when several Captains (out of four) are on vacation at the same time. The City's proposal is endorsed on the basis of maintaining an effective manning program within the Department. The City's proposal for the selection process is both fair and reasonable.

ISSUE #16

- Union Proposal No. 11:

Article XII A, Section C.1, shall be amended as follows:

All members of the Department will be entitled to a vacation pursuant to the following schedule:

Service of more than one (1) year	3 weeks
<u>Service of more than 5 years</u>	<u>4 weeks</u>
Service of more than ten (10) years	<u>5 weeks</u>
Service of more than fifteen (15) years	<u>6 weeks</u>
<u>Service of more than nineteen (19) years</u>	<u>7 weeks</u>

DECISION:

Reject.

DISCUSSION:

The Union seeks to reduce from ten to five the number of years a Firefighter must work in order to obtain four weeks of vacation. It also seeks to reduce from fifteen to ten the number of years to be worked in order to be entitled to five weeks of vacation. It wishes to have six weeks of vacation for members with more than fifteen years of service and seven weeks of vacation for members with more than nineteen years of service.

Although several cities with whom the Union compares Cohoes provide for more numerous increments (i.e., more than three steps), Cohoes ranks well in an overall comparison. Not one provides a three-week vacation after one year. Five weeks after fifteen years is also quite substantial. There appears to be no basis for a change.

ISSUE #17HOURS OF EMPLOYMENT, VACATION, SICK LEAVE, LEAVE OF ABSENCE, ETC. PERSONAL LEAVE, Article XII A, Section E• Union Proposal No. 12:

This Article shall be modified as follows:

1. Each member of the Department will be allowed [one (1) two (2) working days off with pay each year for personal leave.
2. A personal day shall consist of twenty-four (24) hours which can be taken and used in blocks of [six (6)] two (2) hours

provided that no more than two (2) fire-fighters shall be on personal leave at the same time. The Chief may, however, permit, in his discretion, blocks of fewer than [6] 2 hours' leave. Requests by firefighters for personal leave time shall be in writing to the Chief's Office in City Hall and will be honored in order of priority of their receipt in writing.

DECISION:

Reject.

DISCUSSION:

The City notes that this proposal would cost it approximately \$3,750 per year based on 1994 salaries. It argues that the granting of personal leave in two hour increments would be impractical, given the difficulty of locating personnel willing to come in for only two hours.

The City's argument on this point is persuasive. In addition, while the overall amount of money here may be relatively small in relation to the overall budget, the prudent expenditure of resources is required.

ISSUE #18

• City Proposal No. 23:

Article XIIA, Section E.4 (p.16) shall be amended to read as follows:

No more than one employee may be out on personal leave at any given time. If more than one employee requests the same day of such leave, the employee who asked first will be granted such leave.

In the sole discretion of the Fire Chief, and provided it does not interfere with the operations of the Department, more than one employee may utilize personal leave.

DECISION:

Reject.

DISCUSSION:

The City makes this proposal in the interest of "placing parameters on the use of personal time, for manning purposes, cost, and efficiency." No compelling rationale, in the form of specific incidents, was presented to support the need for this change and thus the proposal is rejected.

ISSUE #19

HOURS OF EMPLOYMENT, VACATION, SICK LEAVE, LEAVE OF ABSENCE, ETC. LEAVES OF ABSENCE FOR ASSOCIATION REPRESENTATIVES, Article XII A, Section F

• City Proposal No. 23A:

The last sentence of Section F shall be amended to reduce three (3) to two (2).

DECISION:

Reject.

DISCUSSION:

This proposal limits the number of individuals taking Union leave. The City notes that in 1995, fifteen men took 107 hours off and in 1996, thirty seven men took 246 hours off. Although this leave does increase the need for overtime, there is no evidence that this time was either excessive or unnecessary.

Clearly, leave is always required for grievance handling. By the same token, Contract negotiations may also be time consuming.

ISSUE #20

INSURANCE AND RETIREMENT BENEFITS: HEALTH INSURANCE,
Article XIII

• Union Proposal No. 13:

Section C of this Article shall be altered as follows:

3. The City will pay [\$13.00] \$25.00 per week per member to the Union for the purpose of providing a medical expense fund.

DECISION:

Reject.

DISCUSSION:

No hard evidence was provided that would indicate that the current level of \$13 per member per week was inadequate to meet the needs of the medical expense fund.

ISSUE #21

PROFESSIONAL TRAINING AND IMPROVEMENT COURSES,
Article XV

• City Proposal No. 29:

Article XV (p. 18) shall be amended by adding a new paragraph 5 to read as follows:

Members in a specialized unit will be exempt from the provisions of paragraph 1, above, for any additional specialized training, conferences or seminars.

The City modified this proposal as follows:

Specialized units shall be available to all employees to bid by seniority; all training thereafter, will also be bid by seniority but restricted to only those in a specialized unit.

DECISION:

Accept, with modification.

DISCUSSION:

The initial offer to train personnel on a Department-wide basis to man specialized units is eminently fair. At the same time, it is reasonable to restrict further training in specialized areas to those already in the unit. Additionally, however, the parties may wish to incorporate language into the Agreement that would allow the City the right to provide "refresher" training to just those members of specialized units who are in need of it without having to offer it to all members of the unit on a seniority basis.

ISSUE #22

MISCELLANEOUS PROVISIONS: EXCHANGE OF WORKING DAYS, Article XVII, Section L

• City Proposal No. 34:

Article XVII, Section L, "Exchange of Working Days" (p.20) shall be amended pursuant to the side letter of agreement entered into by and between the parties in February of 1994.

DECISION:

Accept.

DISCUSSION:

While the side letter of agreement was apparently unsigned, the parties do not disagree over its terms. It should therefore be incorporated into the Contract.

ISSUE #23MISCELLANEOUS PROVISIONS: ASSIGNMENTS, Article XVII, Section N• City Proposal No. 36:

Article XVII, Section N, "Assignments" at paragraph 2.a (p. 21) shall be amended by deleting same in its entirety.

DECISION:

Reject.

DISCUSSION:

The City argues that this provision is no longer used, since it refers to bidding concluded in 1981. While it may well be a matter of "housekeeping" to remove it from the Contract, the parties should have a further opportunity to discuss its implications before deleting it.

ISSUE #24• City Proposal No. 37:

Article XVII, Section N.2.e (p.21) shall be amended by adding a sentence to read as follows:

For purposes of this §2.e, the Chief, or his designee, shall have the right to set the working hours for said trainee.

The City modified its proposal as follows:

All trainees will be assigned by the Chief or his designee for an eight hour day, on a five day a week basis, Monday through Friday.

DECISION:

Accept modified proposal.

DISCUSSION:

The modified language meets the needs of both parties.

ISSUE #25

MISCELLANEOUS PROVISIONS, Article XVII, Section S

- Union Proposal No. 16:

Add: Any member who at the time of commencement of employment was required to be EMT certified shall, if he fails to be recertified, be maintained in his regular assignment. He shall be granted the opportunity to continue to attempt to recertify until he attains such recertification.

The City countered with the proposal that following a failure to recertify after two attempts, the employee will be dropped to the next pay step on salary until recertification is achieved.

DECISION:

Following a failure to recertify after three attempts, the member will be dropped to the next pay step until recertification is achieved.

DISCUSSION:

The parties are in agreement that they do not wish to lose the services (through dismissal, of a member who fails to become recertified. They do not agree on what steps should be taken to encourage passage of the examination and recertification. There was discussion concerning the possible loss of an EMT stipend, but since such a stipend has not been granted, that option does not remain open. The granting of three chances in which to recertify before a loss of salary appears to be a reasonable compromise in this situation.

ISSUE #26**MISCELLANEOUS PROVISIONS, Article XVII, Section T****• Union Proposal No. 17:**

Add: All members who attend certification or recertification classes for the purpose of obtaining or maintaining EMT certification shall be released from duty with pay and without chargeback to leave credits. Members who attend certification or recertification classes and examinations during non-duty hours shall be paid for all such time at the overtime rate of time and one half.

DECISION:

Accept, with the following modification: Members who are required to maintain EMT status and attend certification or recertification classes and examinations during non-duty hours shall be paid for all such time at the overtime rate of time and one half.

DISCUSSION:

Currently, all members are released from duty for EMT classes. Thus, the first sentence of the proposal reflects existing practice. In regard to the second, employees not required to maintain EMT status cannot expect overtime pay. Those, however, who are mandated to do so should be paid on an overtime basis. This is consistent with Fair Labor Standards Act procedures.

ISSUE #27**WAGES**

The Union proposes a salary increase of 4.5 percent in each of three years, 1995, 1996, and 1997. The City offers 2.5, 2.95, and 2.95 percent, respectively.

An extensive amount of time was spent by the parties at both the hearing and in their pre- and post-hearing briefs arguing over the economic facts of this case. The Union, for example, focussed on comparable figures for the same Firefighter units it relied on for negotiations in 1994. These were Albany, Amsterdam, Glens Falls, Gloversville, Johnstown, Saratoga Springs, Schenectady, Troy, and Watervliet. It also made comparisons with the Cohoes Police Unit. The Union suggests that the granting of its wage proposal will allow it to maintain its relative historic position. The Union argues, based on the testimony of its expert witness Kevin Decker, that the City has the ability to pay the requested increase.

The City, on the other hand, points out that it suffered a decline in State aid between 1990 and 1993 and that the City tax rate per \$1,000 of assessed valuation has steadily increased. It carries \$1.5 million in uncollected taxes on its books. For the fiscal year ending December 1996, it was taxing at 50.17 percent of its Constitutional tax margin. It has a maximum tax-levying power of \$10.1 million. If it were to raise this an additional \$5 million, the 1996 tax rate would double.

The City believes that the cities it has selected for comparative purposes are far more comparable than those chosen by the Union. They are Amsterdam, Glens Falls, Johnson City, Plattsburgh, and Watervliet. It notes that Albany has a far larger population than Cohoes and a unit six times larger. Troy has 124 Firefighters and Schenectady 118. Johnstown, on the other hand, is significantly smaller, while Saratoga is significantly wealthier.

Clearly, each party selects those municipalities for comparative purposes that best support its position. The truth of the matter undoubtedly lies somewhere in between. At the same time, there is a tendency in presenting comparable rankings to make the most advantageous comparisons. The Union, for instance, argues that Cohoes Captains lag 9.46 percent behind their counterparts. In taking this position, however, it compares 1996 salaries in

Cohoes, where there was no contractual salary increase, with those where there were settlements.

Certainly, the wage and overall increase in employee benefits enjoyed by other employees in Cohoes in 1995 and 1996 play a significant role in this determination. The Union estimates these to be 8.79 percent. There can be no doubt that Cohoes is not a wealthy Community. It is one that has major claims on its shrinking resources. But, by the same token, by deferring a payment to unit members from 1995 and 1996 to the latter part of 1997, it has gained a monetary benefit.

In the final analysis, the members of the unit are deserving of a reasonable increase, consistent with the economic limitations of the City and its financial ability to pay, comparable agreements, the interests and welfare of the public, and the terms of past Agreements. I therefore award as follows:

DECISION:

1995 - 3.5 percent
 1996 - 3.5 percent
 1997 - 2.95 percent

TERM

Three years: 1995-1997

ISSUE #28

SCHEDULE OF PAYMENTS: SALARY

DECISION:

The new salary rates shall be reflected in the firefighters' regular pay checks within fourteen business days after issuance of the award.

ISSUE #29

SCHEDULE OF PAYMENTS: RETROACTIVE PAY

DECISION:

Retroactive pay due pursuant to the award shall be issued to the firefighters no later than March 15, 1998. Any late payment of retroactive amounts due under the award shall include interest at the statutory rate.

ADDITIONAL ITEMS

The following City proposals are being held in abeyance pending either an exhaustion of PERB appeal procedures or a decision by the City not to pursue the issue further:

City Proposal No. 9:

Article XI at Section C.2 (p.8) shall be amended by deleting same in its entirety.

City Proposal No. 10:

Article XI, Section C.3 (p.8) at the first paragraph shall be amended by deleting same in its entirety. The second paragraph of Section C.3 shall be amended to read as follows:

In the event no Captain is available to work the assignment to the vacant position, the firefighters on duty who are deemed qualified by the Chief, will be offered the assignment on a seniority basis provided, however, that no member shall be ordered to perform the assignment unless all senior members have refused it.

City Proposal No. 24:

Article XIII, "Health Insurance" at paragraph C.2 (pp.16-17) shall be amended by deleting same in its entirety.

City Proposal No. 25:

Article XIII, Section C.5 (p. 17) shall be discussed to clarify the current status such that retirees will be liable for prescription drugs as follows:

\$7 for brand name drugs and \$5 for generic drugs.

City Proposal No. 31:

Article XVII, Section D.1 (p. 19) shall be amended to read as follows:

Firefighters will be required to engage in snow removal, at the discretion of the Chief of the Fire Department or his designee.

City Proposal No. 40:

Article XVII, Section R (pp. 21-22) shall be deleted in its entirety and replaced with a General Municipal Law Section 207-a policy and procedure attached hereto.

City Proposal No. 42:

This Collective Bargaining Agreement shall be amended by adding new article to the contract, which article shall be Article __, to be entitled "Due Process Hearing Procedure", to read as follows:

DUE PROCESS HEARING PROCEDURES

Where, because of statutory mandate or judicially imposed mandate, the Employer is required to hold a due process hearing, the procedure utilized by the Employer shall be as follows: The Employer shall appoint a Hearing Officer from the following list agreed upon by the parties: _____.

The Hearing Officer shall be appointed on a rotating basis. Each Hearing Officer shall have the authority to receive testimony in evidence, issue subpoenas and issue an opinion and award. The decision of the Hearing Officer shall be final and binding upon the parties. This Article shall not apply to administrative matters including, but not limited to, grievances and arbitrations.

The following Union proposal is being held in abeyance on the same grounds:

ARTICLE XV.

PROFESSIONAL TRAINING AND IMPROVEMENT COURSES

6. ADD: All in house training shall be attended by members in lieu of their regular duties.

ARTICLE XVII.

MISCELLANEOUS PROVISIONS

M. In-House Training: Based upon a substantial increase in the work load and amount of time spent in training, the Union proposes to limit the duties expected in addition to firefighting. While this proposal was deemed nonmandatory, the Union has filed exceptions with PERB.

Charlotte Gold

CHARLOTTE GOLD,
Chairperson

Elayne Gold 12/11/97

ELAYNE G. GOLD,
Employer Member

Jane K. Finin 12/15/97

JANE K. FININ,
Employee Member

Agree as to Issue Numbers:

(G)
1, 2, 3, 4, 5, 6, 7, 8, 9,
10, 11, 12, 13, 14, 15, 16, 17,
18, 19, 20, 21, 22, 23, 24, 25, 26, 28,
29

Dissent as to Issue Numbers:

27

(G)

Agree as to Issue Numbers:

1, 4, 6, 8, 9, 10, 11, 12, 13, 14,
16, 18, 19, 20, 21, 22, 23, 24,
25, 26, 27 *(FA)*

Dissent as to Issue Numbers:

2, 3, 5, 7, 15, 17 *(FA)*

Date: _____

NOV 05 1997

GRASSO & GRASSO
ATTORNEYS & COUNSELORS AT LAW

ALEXANDER GRASSO (1926-1983)
FRANK N. GRASSO
JANE K. FININ
JOHN V. CREMO

124 CLINTON STREET
SCHENECTADY, NEW YORK 12305
TELEPHONE (518) 377-8534
FAX (518) 377-8536

November 4, 1997

Liesl Zwicklbauer, Esq.
Roemer, Wallens & Mineaux, LLP
13 Columbia Circle
Albany, New York 12203

Re: Uniform Firefighters of Cohoes,
Local 2562, and City of Cohoes
PERB Case No. IA96-004; M95-269
Our File No. 7383 Vol. 2

Dear Liesl:

It is my understanding that the City and Local 2562 have agreed to extend the jurisdiction of the Interest Arbitration Panel in the above referenced to cover a third year, ie, 1997, for an award to cover 1995, 1996 and 1997.

In order to formalize the extension of jurisdiction, I am acknowledging, on behalf of the Union, that the Union agrees to extend the panel's jurisdiction through 1997.

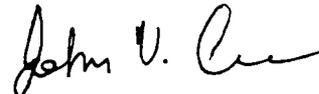
I would appreciate it if you would acknowledge the City's agreement to extend the panel's jurisdiction through 1997 by countersigning the enclosed copy of this correspondence and returning it to me.

After receipt of the copy with your signature, I will forward the letter as the parties' agreement, to the Panel.

Thank you for your assistance in this matter.

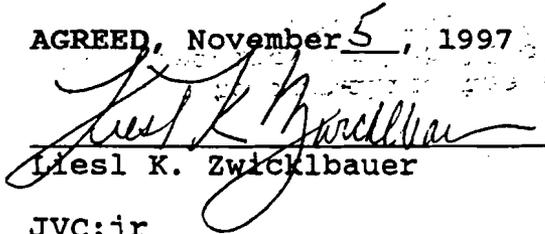
Very truly yours,

GRASSO & GRASSO



By: John V. Cremo

AGREED, November 5, 1997



Liesl K. Zwicklbauer

JVC:jr

NOV 05 1997

GRASSO & GRASSO
ATTORNEYS & COUNSELORS AT LAW

ALEXANDER GRASSO (1926-1983)
FRANK N. GRASSO
JANE K. FININ
JOHN V. CREMO

124 CLINTON STREET
SCHENECTADY, NEW YORK 12305
TELEPHONE (518) 377-8534
FAX (518) 377-8536

November 4, 1997

Liesl Zwicklbauer, Esq.
Roemer, Wallens & Mineaux, LLP
13 Columbia Circle
Albany, New York 12203

Re: Uniform Firefighters of Cohoes,
Local 2562, and City of Cohoes
PERB Case No. IA96-004; M95-269
Our File No. 7383 Vol. 2

Dear Liesl:

It is my understanding that the City and Local 2562 have agreed to extend the jurisdiction of the Interest Arbitration Panel in the above referenced to cover a third year, ie, 1997, for an award to cover 1995, 1996 and 1997.

In order to formalize the extension of jurisdiction, I am acknowledging, on behalf of the Union, that the Union agrees to extend the panel's jurisdiction through 1997.

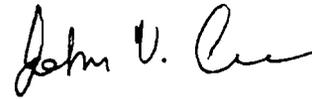
I would appreciate it if you would acknowledge the City's agreement to extend the panel's jurisdiction through 1997 by countersigning the enclosed copy of this correspondence and returning it to me.

After receipt of the copy with your signature, I will forward the letter as the parties' agreement, to the Panel.

Thank you for your assistance in this matter.

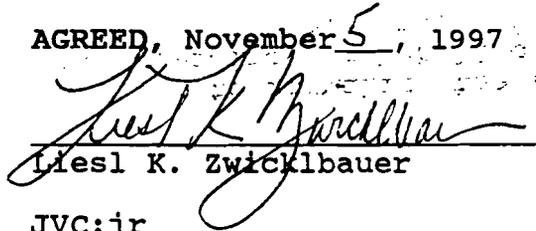
Very truly yours,

GRASSO & GRASSO



By: John V. Cremo

AGREED, November 5, 1997



Liesl K. Zwicklbauer

JVC:jr