

NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD

In the matter of the interest  
arbitration between,

THE CITY OF GLENS FALLS, NEW YORK,

Employer,

-and-

THE GLENS FALLS FIREFIGHTERS UNION,  
LOCAL 2230, IAFF, AFL-CIO,

Union.

OPINION AND AWARD

PERB CASE NO.

IA96-011  
M95-279

NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD  
RECEIVED

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Before the following Public Arbitration Panel:

Chairperson: Michael S. Lewandowski  
Chairman

Member: Jane K. Finin, Esq.  
Employee Organization Panel Member

Member: J. Lawrence Paltrowitz, Esq.  
Public Employer Panel Member

CONCILIATION

Appearances:

For the City: Paula Nadeau Berube, Esq.

For the Union: John V. Cremo, Esq.

On or about May 31, 1996, the Glens Falls Firefighters Union, Local 2230, IAFF, AFL=CIO ("FF" "Union") filed a petition for compulsory interest arbitration with the New York State Public Employment Relations Board ("PERB"). The City of Glens Falls, New York ("City") and the FF had reached impasse in their negotiations for a successor Agreement to the Collective Bargaining Agreement between the parties that expired on December

31, 1995.

In accordance with Section 209.4 of the Civil Service Law, the undersigned were designated as the Public Arbitration Panel members by letter dated March 13, 1997 from PERB. The panel met and conducted a hearing in the City of Glens Falls on July 8, 1997, July 11, 1997 and September 10, 1997. The members of the panel met to discuss the issues in executive sessions after the hearings.

At the hearing, the parties were afforded a full opportunity to present relevant evidence in support of their positions. Each presented witnesses for examination and cross-examination and documentary evidence including data collected concerning fire departments that they considered to be comparable to that of the City. The content of this opinion and award reflects the results of consideration of the evidence presented against the criteria contained in the Fair Employment Act. The final disposition of the issues is the result of the deliberations of the panel.

The evidence presented by the parties was considered against the criteria set forth in the Law including but not limited to a comparison of wages, hours and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions; the interests and welfare of

the public and the financial ability of the public employer to pay; the peculiarities in regard to other professions such as hazard, educational qualifications, training and skills and the terms of collective agreements negotiated between the parties in the past providing the compensation and fringe benefit package that currently exists for the bargaining unit members.

There was unanimous agreement that the duties performed and the responsibilities assumed by the members of the Union are consistent with those performed by employees who hold the title of Firefighter and associated titles in the jurisdictions offered by the parties for consideration for comparison by the panel.

ISSUES

There was no dispute concerning the length of the Agreement sought by the parties thru this process. The panel's award provides for a two-year term of Agreement commencing immediately following the expiration of the Agreement ending December 31, 1995.

The Firefighters advanced the following proposals during the arbitration. The proposal are summarized below.

1. SALARIES: The Union seeks wage increases of 9% for each year of the two-year Agreement.
2. Union proposal 2 would require the City to provide Firefighters with the same dental insurance benefits the City provides to other City employees.
3. This proposal would require the City to pay overtime pay to Firefighters who work any holiday. Firefighters now enjoy 12 holidays pursuant to their Agreement with the City.
4. This proposal would provide Firefighters with the ability to sell unused sick leave to the City and would provide a sick leave buy-out when an employee is separated from service with the City.
5. The Union seeks to accelerate the time it takes to achieve use of and to increase the number of vacation days.
6. Changes the appointment process for the appointment of members to the Labor-Management Committee. Currently the President of the Common council makes the appointments. Under this proposal, the Mayor would make the appointments.
7. Provides overtime pay at the rate of time and one-half for any hours worked in excess of 24 (currently paid at straight time). The second part of this proposal provides pay at the rate of time and one-half for any time an employee is called back to duty.

8. The Union seeks an increase in the annual uniform clothing allowance from \$237.50 to \$475.00 effective January 1, 1996 and an increase in the uniform cleaning allowance from \$25.00 to \$50.00.

The City advanced the proposals summarized below.

1. WAGES: The City proposed increasing salaries by 3% effective January 1, 1996 and 2.75% in the second year of the Agreement.
2. Firefighters currently do not contribute towards the premium the City pays for health insurance. The City proposed requiring Firefighters to contribute to the payment of health insurance premiums as follows.  
  
January 1, 1996, Individual Plan - \$14.00/mo.;  
2 Person Plan - \$28.00/mo.; Family Plan - \$40.00/mo.  
  
January 1, 1997, Individual Plan - \$16.00/mo.;  
2 Person Plan - \$32.00/mo.; Family Plan - \$44.00/mo.
3. Clarify that retirees will continue to pay the negotiated contributions for health insurance when the retiree retires from the City. Confirm that retirement is retirement as referenced in Article VI of the Agreement.
4. Requirement that Personal Leave be taken in 24 hour increments and delete payment for unused personal leave.
5. Require that a Firefighter agree not to file any other claim against the City if that Firefighter files a grievance and similarly agree not to grieve if a Firefighter has submitted a claim against the City to another forum.
6. Bar Firefighters from working more than 24 hours without a 16 hour break except in an emergency.
7. Bar Firefighters from trading duty days.
8. Pro-rate clothing allowance for Firefighters who leave

the City employ to retire in the same fashion the allowance is pro-rated for Firefighters who leave for other reasons.

**DISCUSSION, ANALYSIS AND FINDINGS**

**SALARIES:** After extensive review of the significant amount of evidence presented at the arbitration, the panel members concluded that the City did have the ability to pay the award made here but were unable to reach agreement on a set of employers comparable to the City of Glens Falls. The Union offered a set of comparables drawn from a fifty mile radius surrounding Glens Falls. The City offered the cities of Gloversville, Johnstown, Plattsburgh and Saratoga Springs. The only two cities deemed by both parties as comparable employers were the cities of Gloversville and Johnstown. The majority of the panel deemed the set of comparables offered by the Union as less comparable than that offer by the City in that the Union's list includes large municipalities such as the cities of Albany, Plattsburgh, Schenectady and Troy. Those cities have populations as much as six times that of the City of Glens Falls and Fire Departments with as many as six times the members as that of the City of Glens Falls. A proper comparison with many of the Unions proposed comparable employers is thus not proper. The list of comparable employers offered by the City was deemed by the majority of the panel to be more appropriate when an assessment of the size of the population served is made and when an

assessment of the size of the department is also made.

The majority of the panel reached its position on this issue after assessing the City's ability to pay, the standing of the Firefighters' salaries as compared to salaries paid by the comparable employers proposed by the City, considering the rate of increase in the cost of living and the raises given to other City employees such as the City's police. The City's police got a 3% increase for 1996 and a 2.75% increase for 1997.

Considering all of the above, and noting that the top salary<sup>1</sup> for a Glens Falls Firefighter falls above the top salary of the average of the City's comparables, the majority of the panel finds that the Union's proposal of 9% for 1996 and an additional 9% for 1997 is excessive. The panel finds that the City's proposed salary increase of 3% effective January 1, 1996 and 2.75% effective January 1, 1997 is the appropriate salary increase in this dispute.

DENTAL INSURANCE: The majority of the panel notes that the

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<sup>1</sup>The Union did advance the argument that the FF's salaries were greatly diminished by the establishment of a two tier salary system that takes their members hired after 1/1/93 an extended period of time to reach top salary. The majority of the panel noted that the salary schedule the Union now argues against does not now apply to the majority of unit members, had only recently been negotiated and that the City has an obligation to fund the top salaries of employees regardless of the length of time it takes an individual employee to achieve top salary.

Firefighters are the only unit of City employees who do not have a City provided dental insurance plan. The panel also notes that the Firefighters were willing to cooperate with the City in the past to reduce costs and were willing to reduce compensation and other benefits. Therefore, at this time when the City does have the financial ability to provide this benefit, the majority of the panel find that the evidence presented shows that the Firefighters should be provided with the same dental insurance benefit that is available to all other City employees. The panel finds that this benefit should be provided to members of this unit effective December 31, 1997. The City has 60 days after the execution of this award to implement this benefit. The benefit shall not be retroactively implemented.

HOLIDAYS: The Union proposed payment of time and one-half for all work on holidays. The City opposes this proposal. The data presented shows that the accepted comparable employers do not provide the benefit proposed by the Union. Based on the foregoing, the majority of the panel finds that this proposal should be rejected.

SICK LEAVE BUY BACK AND SICK LEAVE BUYOUT: No other group of City employees nor the average firefighter employed by the accepted comparable employers receives a sick leave buy back benefit. On this basis, the majority of the panel finds that the Union's proposal to establish a sick leave buy back should be

rejected. Other City employees do receive a sick leave buyout benefit. The level of benefit is not at the level the Firefighters propose. Based on the foregoing, the panel finds it proper to support the establishment of a sick leave buy out, effective December 31, 1997, similar to that offered other City employees. The benefit is capped at 180 (eight hour) days and is paid at the rate of \$10.00 per day. The maximum benefit payable is thus \$1800.00.

VACATION: The data before the panel from the comparable employers as deemed by the majority of the panel shows that the Firefighters receive more vacation time than the average employee employed by the comparable employers thus the majority of the panel finds the data supports rejecting the Union's proposal regarding accelerated and increased vacation time.

APPOINTMENTS TO THE LABOR MANAGEMENT COMMITTEE: the panel unanimously determined that there was insufficient data submitted to support this proposal and therefore the proposal is rejected.

OVERTIME/CALL BACK TO DUTY: The evidence presented does not support the Union's proposal to receive overtime pay for all hours worked in excess of 24 hours therefore the majority of the panel rejects this proposal. Similarly, the majority of the panel found no evidence of need or evidence that comparable employees receive time and one-half pay for all calls back to

duty. This proposal was rejected by the majority of the panel.

UNIFORM CLOTHING ALLOWANCE AND MAINTENANCE OF UNIFORMS: The evidence presented shows that the Union's proposal to increase the uniform clothing allowance from \$237.50 to \$475.00 and the cleaning allowance from \$25.00 to \$50.00 is justified. The new allowance, effective January 1, 1996, will be in line with allowances paid comparable employees and is below what the City pays its police (\$500.00/\$200.00 maintenance). Based on the foregoing, the majority of the panel voted to accept the Union's proposal.

HEALTH INSURANCE CONTRIBUTION: The City proposes requiring, for the first time, that Firefighters contribute to the cost of providing health insurance. The evidence presented shows that no other employee unit in the City, including the police who are paid higher salaries, contribute to the cost of their health insurance. The evidence presented also showed that the Union recently voluntarily switched to a HMO plan at the City's request thus saving the City money on health insurance premiums. The majority of the panel voted to reject the City's proposal on health insurance premium contributions.

DEFINITION OF RETIREMENT: The City proposed to clarify that "retirement" is defined as "retirement" as referenced in Article VI of the expired Agreement. The Union objected to the proposal

because the proposal, as worded, would exclude those individuals who retire under the disability provisions of General Municipal Law §207-a or NYS Retirement System §363 retirements for non-job disability. The majority of the panel found that the evidence submitted supports adopting the City's proposal with modifications to include employees who retire under the provisions of law referenced above.

PERSONAL LEAVE USAGE: the majority of the panel found only anecdotal evidence to support the City's claim that it needed to change personal leave provisions so that employees may only take leave in 24 hour increments or that leave should be lost at year end. These proposals were thus rejected.

GRIEVANCE PROCEDURE: The majority of the panel also found insufficient evidence to support the City's proposal to limit employee complaints to either the grievance procedure or other forums. The panel viewed the proposal as both a loss of a significant benefit without sufficient evidence to support such a loss and viewed the aspects of the proposal that call upon the employee to surrender rights to access to State and Federal agencies and the courts as possibly violative of State or Federal law. Based on the foregoing, the majority of the panel found that the proposal should be rejected.

24 HOUR LIMITATION: The City proposal concerning limiting hours of work to no more than 24 hours followed by a 16 hour break was considered by the panel. Although the City provided limited example of when not having the rule was problematic, the safety aspect of the proposal was recognized by the majority of the panel. The Union presented evidence that the City has control over scheduling to the extent that it may normally avoid such an occurrence, that the safety aspect of this issue is diminished because Firefighters do get to rest and sleep while on duty and that including this provision in the Agreement would have a significant effect on other provisions of the Agreement such as overtime distribution. The Union asserts that based on the tie in to the other provisions of the Agreement, this proposal should not be imposed on the parties, instead it should be left to the parties to negotiate. Based on the lack of evidence especially that evidence that would show the effect of the change on the total Agreement, the majority of the panel finds this proposal should be rejected. This issue should be discussed by the parties in future negotiations perhaps considering a greater threshold than the 24 hours the City proposes here as a starting point for discussions.

TRADING DAYS: The evidence presented shows that the current system has been in effect for 25 years with little incident of problem. Based on this evidence, the majority of the panel finds this proposal should be rejected.

PRO-RATING CLOTHING ALLOWANCES: The current Agreement provides that except for retirees, members of the Union who leave the employ of the City must forfeit, on a pro-rated basis, that portion of their clothing allowance which is unused. The City seeks to eliminate the exception for those who leave to retire. Considering the evidence before the panel, especially considering the increase in the allowance provided by this award, the majority of the panel finds it proper to accept the City's proposal effective December 31, 1997.

AWARD

1. The term of this award shall be for two years commencing January 1, 1996.
2. Salaries will be increased as follows. Three (3%) percent on December 31, 1995 salaries effective January 1, 1996. Two point seven-five percent (2.75%) on December 31, 1996 salaries effective January 1, 1997.
3. The terms of the expired Agreement shall be amended as detailed in the individual sections of the Discussion, Analysis and Findings portion of this award.

AFFIRMATION

STATE OF NEW YORK    )  
                                  )    ss.:  
COUNTY OF SARATOGA )

We, the public arbitration panel identified above, do hereby affirm upon our oath as Arbitrators that we are the individuals described in and who executed this instrument, which is our award. The award may also contain concurring or dissenting opinions from panel members. Any such concurring or dissenting opinions are attached and made part of this award.

Date: 1/21/98

  
MICHAEL S. LEWANDOWSKI

Date: 1/26/98

  
JANE K. FININ, ESQ.

Date: 1/28/98

  
J. LAWRENCE PALTROWITZ, ESQ.

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EMPLOYMENT RELATIONS BOARD**

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-and-

**THE GLENS FALLS FIREFIGHTERS UNION,  
LOCAL 2230, IAFF, AFL-CIO,**

Union.

**CONCURRING OPINION  
WITH DISSENT**

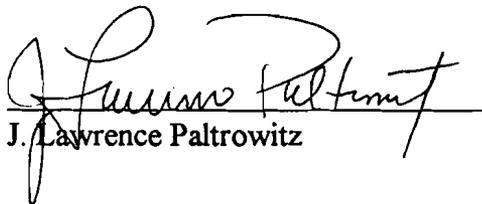
PERB Case No. IA96-011  
M95-279

Although I generally concur with the Opinion and Award, I respectfully dissent from two issues in the Opinion and Award. First, with regard to health insurance contributions, the record (Joint Exhibit 5 - 1989-1991 Collective Bargaining Agreement and Joint Exhibit 7 - 1993-1995 Collective Bargaining Agreement) demonstrated that the firefighters had previously contributed toward health insurance premiums in amounts similar to those currently proposed by the City. Therefore, this would not have been the first time that the firefighters and all of the other City's bargaining units contributed toward their health insurance premiums. Furthermore, the City's proposal would have allowed such contributions to be made on a pre-income tax basis and without FICA contributions pursuant to Section 125 of the Internal Revenue Code. Accordingly, the actual out-of-pocket cost to the employees would have been minimal, while at the same time providing the City with some offset to the significant costs of health insurance for the employees. Although all of the unions in the City had agreed to switch from an indemnity health insurance plan to HMO Plans during the term of the expired Collective Bargaining Agreement, only the Firefighters' Collective Bargaining Agreement mandates that the more expensive MVP Plan be

provided. In light of the evidence presented in the record, as well as the majority of the panel granting the Firefighters' Union dental insurance coverage for the first time, it would have been appropriate for a majority of the panel to support an employee contribution toward the health insurance premiums.

Second, with regard to the 24 hour limitation issue, I respectfully submit that the majority of the panel erred when it failed to limit the firefighters from working more than 24 consecutive hours without a break while at the same time acknowledging the safety aspect of the City's concerns. Contrary to the union's assertions, the implementation of the City's proposal would not have contradicted or conflicted with any other provisions of the parties' Collective Bargaining Agreement. This panel member was certainly persuaded by the evidence presented by Chief Cote that something needed to be done to minimize the safety concerns regarding the continuous tours of duty worked by the firefighters. The City's proposal would have certainly limited the safety exposure to the firefighters. I do concur, however, with the union and the majority of the panel that the City has the control over the scheduling of firefighters on off-duty days, and should exercise its right to minimize any firefighter from working consecutive 24 hour shifts, except in the case of an emergency.

Dated: January 28, 1998

  
J. Lawrence Paltrowitz

NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD

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Arbitration between

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- and -

THE GLENS FALLS FIREFIGHTERS UNION,  
LOCAL 2230, IAFF, AFL-CIO,

Union.

CONCURRING OPINION

PERB CASE NO.

IA96-011  
M95-279

As the Union's Interested Arbitrator, I am concurring with the Award. However, I am concurring with a separate opinion for the purpose of noting that the parties' positions relative to wages was misunderstood and, I believe, misconstrued in the Majority Opinion and Award. The Union's original proposals did seek 9% salary increases for each of two years. The Union, however, sought 4.5% increases by its arguments at the hearings and in its closing brief. The Union in this case moved off its 9% demands and argued, appropriately, based on all of the proof, that it was entitled to 4.5% increases for 1996 and 1997. What is disturbing is that the City started negotiations at the other end of the spectrum, proposing no salary increases and frivolous and substantial give back demands, and while the Panel Majority seems to chastise the Union for an extreme starting position, the Panel Majority rewards the City for its even more extreme negotiating position. The majority statement that the City proposal of 3% and

2.75% is appropriate and the Union's 9% proposal is excessive is an apparent attempt to impose a new standard: compare the City's last best offer to the Union's first highest offer and choose the more reasonable. This approach rewards the City for refusing to make any reasonable salary proposal during negotiations. This is exactly what happened in this case because the City's offer of 3% and 2.75% was never made until the City presented its case in arbitration. What is impossible to understand, however, is why the City's position in arbitration is never compared to the Union's position in arbitration. Clearly, even the City's exhibits proved that the Union was entitled to an 11% raise over two years just to maintain its relative position, historically, to the units the City deemed comparable to Glens Falls (City Exhibit 22).

In the final analysis, as the Union's Arbitrator, I must sign on to the Award because the Firefighters are certainly entitled to the raises and other benefit improvements contained in the Award.

Dated: January 27, 1998

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Jane K. Finin