

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD
INTEREST ARBITRATION PANEL

In the Matter of the Arbitration
between
THE CITY OF ONEIDA,
Public Employer,
-and-
ONEIDA PAID FIREFIGHTERS' ASSOCIATION,
LOCAL 2692,
Employee Organization.
PERB Case No. IA96-015; M96-041

OPINION
AND
AWARD

NYS PUBLIC EMPLOYMENT RELATIONS BOARD
RECEIVED

MAY 23 1997

BEFORE: Jeffrey M. Selchick, Esq.
Public Panel Member and Chairman

CONCILIATION

Dominick A. Timpano, Secretary-Treasurer
NYS Professional Fire Fighters
Employee Organization Panel Member

William M. Wallens, Esq.
Roemer Wallens & Mineaux, LLP
Employer Panel Member

APPEARANCES:

For City of Oneida:

Roemer Wallens & Mineaux, LLP
Liesl K. Zwicklbauer, Esq., of Counsel

For Oneida Paid Firefighters' Association:

Edward J. Fennell, Labor Consultant
Edward J. Fennell Associates

BACKGROUND

Pursuant to the provisions contained in Section 209.4 of the Civil Service Law, the undersigned Panel was designated by the Chairperson of the New York State Public Employment Relations Board, to make a just and reasonable determination of a dispute between the City of Oneida ("City") and the Oneida Paid Firefighters' Association ("Union").

The City of Oneida is a municipal corporation located in Madison County and encompasses approximately 22 square miles (Union Exhibit 5). Its population is currently estimated as approximately 10,850 people (City Exhibit 5).

The Union is the certified bargaining agent for all permanent employees of the Oneida Fire Department including non-uniformed employees attached to the Fire Department: i.e. mechanics, lineman, inspectors, scott repairman, excluding the Chief and the First Deputy Chief. There are currently 22 full-time firefighters serving the Department in various assignments (City Exhibit 1). The Fire Department operates 24 hours per day, 7 days per week.

The last collective bargaining agreement between the parties covered the period which commenced January 1, 1993 and ended December 31, 1995.

Prior to the expiration of the 1993-95 Agreement, in February of 1996, the parties began negotiations for a successor contract, but such negotiations were unsuccessful, and shortly thereafter in April of 1996, the parties reached impasse. Subsequent mediation by a PERB Mediator was unsuccessful, and on July 24, 1996, the Union filed a Petition for Interest Arbitration pursuant to Section 209.4 of the Civil Service Law (Joint Exhibit 1).

The City filed a Response to said Petition on July 30, 1996 (Joint Exhibit 2), and thereafter, on September 9, 1996 the undersigned Public Arbitration Panel was designated by the Public Employment Relations Board, pursuant to Section 209.4 of the NYS Civil Service Law (Joint Exhibit 3) .

A hearing was conducted before the undersigned Panel in Oneida on November 13, 1996. At the hearing, both parties were represented and both parties submitted numerous and extensive exhibits and documentation, as well as the presentation of argument on their respective positions. After the hearing process was completed, both parties submitted additional exhibits and post-hearing briefs to the Panel.

Thereafter, the undersigned Panel met in Executive Sessions, and reviewed all data, evidence, argument and issues. After significant discussion and deliberations at the Executive Sessions, the Panel members reached unanimous agreement on this Interest Arbitration Award.

The positions originally taken by both parties are quite adequately specified in the Petition and the Response, numerous hearing exhibits, and post-hearing briefs, which are all incorporated by reference into this Award. Such positions will merely be summarized for the purposes of this Opinion and Award.

Set out herein is the Panel's Award as to what constitutes a just and reasonable determination of the parties' contract for the period January 1, 1996 through December 31, 1997.

In arriving at such determination, the Panel has considered the following factors, as specified in Section 209.4 of the Civil Service Law:

- a) comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the 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.

SALARYDiscussion on Salary

As is generally the case, the parties are at impasse over the appropriate wage increase to be received by members of the bargaining unit. The bargaining unit salaries range from a minimum of \$18,375 for a first year firefighter to a top grade salary of \$28,554 at the end of 1995. There is an additional stipend for Oneida Firefighters with EMT training, resulting in a top grade salary of \$29,854 at the end of 1995. The Union is seeking a 10% salary increase effective January 1, 1996, and a 10% salary increase effective January 1, 1997. The Union maintains that such significant increases are required and justified based on comparable salaries received by firefighters in similar cities.

As comparables, the Union contends that the following cities are appropriate: Auburn, Corning, Cortland, Fulton, Ithaca, Norwich and Oswego. The Union argues that when viewed against the salaries of firefighters in these comparable cities, Oneida Firefighters are the lowest paid (Union Exhibit 7). Further, the Union has also compared Oneida Firefighters with Oneida Police Officers, who receive a top grade salary of \$35,984 excluding night differential (Union Exhibit 6). The Union argues that this disparity in salaries is inappropriate, as the salaries for Oneida Firefighters and Police Officers was, as recently as 1989, comparable (Union Exhibit 6). The Union seeks parity for Oneida Firefighters.

The City has offered a 3% salary increase effective January 1, 1996 and a 3% salary increase effective January 1, 1997. The City offers as comparables the cities of Hornell, Johnstown, Norwich and Oneonta, and the villages of Herkimer and Ilion. The City also maintains that the Panel should consider seriously the fact that all other unionized employees of the City received a 3% wage increase in 1996 and a 3% wage increase in 1997. This includes Oneida Police Officers (City Exhibit 5).

Although both parties presented financial information (see Union Exhibit 5 and City Annual Financial Reports for 1992-1995), there is no inability to pay issue in this case. However, the Panel has reviewed all financial information presented, including the City Budgets for 1992-1995, and has determined that the City has the ability to pay for the salary increases and other economic issues awarded herein. The Panel has considered all of the evidence, data and arguments presented by both parties, and has applied such data to the criteria mandated by statute as specified in Section 209.4 of the Civil Service Law.

In determining the proper comparables, the Panel notes that the City of Oneida has a population of approximately 10,850 and maintains a Fire Department of 21 members. Searching for upstate New York communities of comparable size with comparable fire departments, the Panel has identified the City of Hornell, with a population of approximately 10,000 people and a fire department of 21 members; the City of Johnstown, with a population of

approximately 9,000 people and a fire department of 24 members; the City of Oneonta, with a population of approximately 14,000 people and a fire department of 24 members; and the Village of Norwich, with a population of approximately 7,600 people and a fire department of 15 members (City Exhibit 5 and Union Exhibit 7).

It is the finding of this Panel that the ability of the City to provide for salary increases must be balanced with the public safety and welfare, and the obligation to provide Oneida Firefighters with a fair and equitable wage for the important and in many cases, dangerous work which they perform.

As of 12/31/95, the date of contract expiration, the top base salary for an Oneida Firefighter was **\$28,554**. A review of salaries of firefighters with similar service experience, in the comparable cities as of 12/31/95 indicates the following:

Hornell	\$31,223
Johnstown	\$30,109
Norwich	\$29,586
Oneonta	\$26,385

The Panel is of the view that the 3% salary increases for 1996 and 1997 will allow Oneida Firefighters to maintain their relative salary standing when compared with the above communities (see City Exhibit 5 and Union Exhibit 7). Such salary increases are also in accord with the current rate of inflation which has been estimated at slightly under 3% for 1996.

Finally, and of further great importance to the Panel is the fact that the Oneida Police have accepted 3% salary increases for 1996 and 1997, as have the CSEA represented employees of the City. It is both good municipal management and a matter of equity to provide City employees with equal salary increases.

Therefore, after careful consideration and review of all the data and material presented herein, the Panel has concluded that salary increases to Oneida Firefighters are warranted, and that the City does have the ability to pay such modest increases.

Accordingly, and after consideration of the exhibits, documentation, and testimony presented herein; and, after due consideration of the criteria specified in Section 209.4 of the Civil Service Law, the Panel makes the following

AWARD ON SALARY

1. All Firefighters unit members shall receive a 3% increase in wages effective 1/1/96.
2. All Firefighters unit members shall receive a 3% increase in wages effective 1/1/97.

LONGEVITIES

Discussion on Longevity Payments

Section 17 of the 1993-95 Agreement provides for the following schedule of longevity benefits:

\$250 at the start of five (5) years of service

Additional \$250 at the start of ten (10) years of service

Additional \$250 at the start of fifteen (15) years of service

Additional \$1250 at the start of twenty (20) years of service

At the start of twenty-one (21) years of service total longevity will be \$1000 and shall remain at that level.

The Union has proposed that employees receive as a longevity bonus 2% of base salary at five (5) years; 3% of base salary at ten (10) years; 4% of base salary at fifteen (15) years; and 5% of base salary at twenty (20) years. The Union indicates that it the current longevity schedule, which decreases longevity for years over 20, provides long term City firefighters with lower longevity payments than received by firefighters in comparable communities.

The City opposes any increase in the longevity schedule, which the City argues is comparable to that received by firefighters in other upstate New York communities.

The Panel has considered the modest salary increases awarded herein, and the fact that Oneida Firefighters currently pay a 12.5% contribution for health insurance if hired prior to January 1, 1993, or 25% if hired after that date. That is a higher contribution than that paid by other City employees, including Oneida Police Officers. While the Panel is not awarding salary increases beyond the 3% per year offered by the City, the Panel does find that an additional increase in overall compensation, in the form of increased longevities, will balance the additional health insurance contribution paid by Oneida Firefighters.

Accordingly, the Panel finds that an increase in the longevity schedule is warranted and increases each longevity step by \$250 and further extends to 25 years the period for which longevity shall be paid at the highest level.

AWARD ON LONGEVITIES

Effective January 1, 1996, and retroactive to that date, longevity payments shall be paid as follows:

\$500 at the start of five (5) years of service

\$750 at the start of ten (10) years of service

\$1000 at the start of fifteen (15) years of service

\$2250 at the start of twenty (20) years of service

At the start of twenty-five (25) years of service total longevity will be \$1250 and shall remain at that level.

Section 17 of the 1993-95 Agreement shall be modified accordingly to reflect the above changes.

OVERTIME AND CALLBACK

Discussion on Overtime and Callback

Section 4 of the 1993-95 Agreement provides that when an employee is called back to work for "fighting fires, rescues and pumping cellars" he shall be paid a minimum of 3 hours pay at straight time. For all other incidents of call back, an employee is only paid for the actual time worked, and such pay is also at the straight time pay rate.

The Union proposes that all call back time be paid at the rate of time and one-half pay. The Union argues that a review of the collective bargaining agreements for Auburn, Corning, Cortland, Fulton, Ithaca, Norwich and Oswego, all submitted by the Union, indicates that all are paid time and one-half for call back time. In fact, the Union further points out that the municipalities deemed comparable by the City, that is, Herkimer, Hornell, Ilion, Johnstown, Norwich and Oneonta, also pay for call back time at the overtime rate of time and one-half pay.

The City is opposed to the Union's demand that there be a minimum of 3 hours for all call back time, and that all such time be paid at the overtime rate of time and one-half pay. The City has estimated the increased cost of guaranteeing a minimum overtime of 3 hours for all call back time at \$1768, based on the number of call back hours for 1995 (see City Exhibit 4).

The Panel finds that there is no justification for providing the minimum of 3 hours pay for call backs only under the certain instances of "fighting fires, rescues and pumping cellars" and that all instances of call back should be paid at a minimum of 3 hours. This is to compensate an employee for the inconvenience of being required to return to work after his regular shift schedule has been completed. However the Panel further finds that compensation for the minimum 3 hours of call back shall continue to be paid at the straight time rate.

AWARD ON OVERTIME AND CALLBACK

Effective January 1, 1997, and retroactive to such date, all call back instances, for any reason, shall be subject to a three (3) hour minimum pay at straight time.

The language contained in Section 4 of the 1993-95 Agreement shall be amended to reflect such change.

SICK LEAVE INCENTIVE

Discussion on Sick Leave Incentive

Section 7 of the 1993-95 Agreement provides for various provisions relating to sick leave and sick leave usage by members of the unit. Of particular relevance herein is the provision which allows an employee to convert one half of his unused accumulated sick leave into vacation time, not to exceed 300 working hours. Also, there is a \$200 sick leave incentive paid to an employee who does not use any sick leave in a calendar year.

The Union proposes that upon an employee's retirement, any excess accumulated sick leave that cannot be converted to vacation leave be applied toward health insurance premiums for dependent coverage. The Union also proposes an increase in the current sick leave incentive, as well as new conditions for earning an incentive. Specifically, the Union proposes that any employee who does not use any sick leave shall receive \$300; for only one day usage an employee shall receive \$150, and for two days usage an employee shall receive \$75 as a sick leave incentive.

The City opposes such proposals, and claims that an increase in the sick leave incentive as well as the conversion of unused sick leave to health insurance premiums would be costly. The City indicates that no other City employee group has any sick leave incentive.

The Panel is of the opinion that the use of unused accumulated sick leave toward the cost of health insurance premiums for dependent coverage upon retirement is an idea worth pursuing, but which may be costly and have wider implications not fully explored herein. Therefore the Panel believes that such proposal should be discussed and resolved through negotiations and not as a result of an Interest Arbitration proceeding. Ideally, such subject should be part of an overall package discussion on health insurance costs and benefits.

The Panel is of the view that a sick leave incentive program is a positive tool which serves to reduce the use of sick leave by unit members and often operates to increase productivity within a department. While the Panel does not believe the current sick leave incentive program requires modification, it does agree that the sick leave incentive should be increased from \$200 to \$300 in recognition of the value to the department of an employee who used no sick leave during a year, maintained his overall health, and has thereby increased his productivity as an Oneida Firefighter.

AWARD ON SICK LEAVE INCENTIVE

Effective January 1, 1996, and retroactive to such date, any employee who does not use any sick leave in a calendar year shall be paid \$300 which shall be paid by the second pay period in the following January. The appropriate language in Section 7 of the 1993-95 Agreement shall be modified to reflect same.

GRIEVANCE PROCEDURE

Discussion on Grievance Procedure

Section 3 of the 1993-95 Agreement provides for a grievance procedure following a three step process ending in binding arbitration. Step 2 of the grievance process provides for a hearing to be conducted by the Commissioner of Public Safety, but does not specify the hearing procedure or details thereof.

The City proposes that a specific hearing process be established, if, in the discretion of the Commissioner of Public Safety, he/she determines that a hearing is necessary. The holding of a hearing at Step 2 should be optional and left to the judgment of the Commissioner. The City further maintains that a specific hearing procedure to be utilized at such hearing should be agreed upon by the parties.

The Union has no objection to the City's proposal to delineate the Step 2 hearing process and to allow for such hearing at the discretion of the Commissioner of Public Safety.

AWARD ON GRIEVANCE PROCEDURE

The City's proposal regarding the delineation of a specific hearing procedure to be utilized for the Step 2 hearing, and the City proposal that such hearing be at the discretion of the Commissioner of Public Safety is accepted. Section 7 of the 1993-95 Agreement shall be modified to reflect same.

TRAINING

Discussion on Training

Section 21 (11) of the 1993-95 Agreement provides that training shall not be more than two (2) hours at a time, and shall not be performed after 17:00 hours or 5:00 p.m. The City does provide training for Advanced EMT, State Fire Code Enforcement, Hazardous Materials, and other relevant training. More areas of training are being constantly developed.

To better allow the City to provide necessary training, the City proposes that training be allowed to last up to four (4) hours at a time, and that training shall not be performed after 20:00 hours or 8:00 p.m.

The Union has no objection to this City proposal.

AWARD ON TRAINING

Article 21 (11) of the 1993-95 Agreement shall be modified to provide that mandated training shall not be more than four (4) hours at a time nor be performed after 20:00 hours or 8:00 p.m.

TRANSFERS

Discussion on Transfers

Section 41 of the 1993-95 Agreement provides for the posting of an open position for lateral transfer, and the bidding of the position by seniority. In practice, this provision has never been utilized.

The City proposes to eliminate this entire provision. The Union recognizes the difficulty with the current provision and is agreeable to revisions to more accurately reflect the existent practice.

AWARD ON TRANSFERS

Section 41 of the 1993-95 Agreement shall be modified to read as follows:

Section 41 Transfers

In the event of a job opening due to the promotion, transfer, demotion, retirement or demise of an employee, all such positions shall be announced by bulletin which shall be posted in convenient locations accessible to all employees for a period of at least fourteen (14) calendar days. Such positions shall be considered open for written bids for this fourteen (14) calendar day period.

REMAINING ISSUES

Discussion on Remaining Issues

The Panel has reviewed in detail all of the demands and proposals of both parties, as well as the evidence in support of said proposals. The fact that these proposals have not been specifically addressed in this Opinion and Award does not mean that they were not closely studied and considered in the overall context of contract terms and benefits by the Panel members. In interest arbitration, as in collective bargaining, not all proposals are accepted, and not all contentions are agreed with. The Panel, in reaching what it has determined to be a fair result, has not addressed or made an Award on many of the proposals submitted by each of the parties. The Panel is of the view that this approach is consistent with the practice of collective bargaining. Thus, we make the following award on these issues:

AWARD ON REMAINING ISSUES

Any proposals and/or items other than those specifically modified by this Award are hereby rejected.

RETENTION OF JURISDICTION

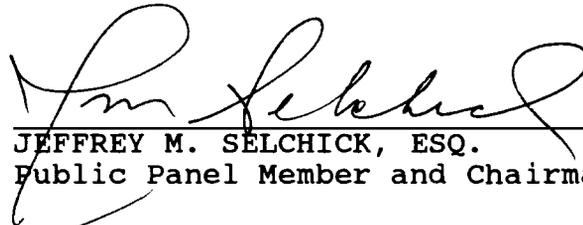
The Panel Chairman hereby retains jurisdiction of any and all disputes arising out of the interpretation of this Opinion and Award.

REVISION OF CONTRACT

The Panel suggests that the parties revise the 1993-95 Agreement in accordance with the provisions of this Award, and prepare and execute a 1996-97 Agreement which reflects the provisions of this Award.

DURATION OF CONTRACT

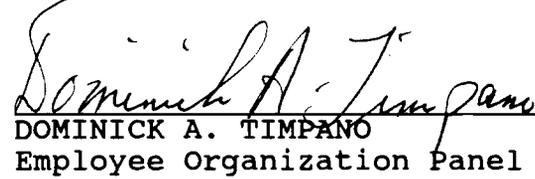
This Award covers the period commencing January 1, 1996 and ending December 31, 1997.



JEFFREY M. SELCHICK, ESQ.
Public Panel Member and Chairman

5/20/97
Date
of Award

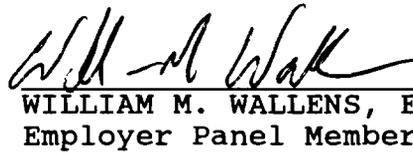
Concur



DOMINICK A. TIMPANO
Employee Organization Panel Member

05/15/97
Date

Concur



WILLIAM M. WALLENS, ESQ.
Employer Panel Member

5/19/97
Date

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

On this 20th day of May 1997, before me personally came and appeared Jeffrey M. Selchick, Esq., to me known and known to me to be the individual described in the foregoing Instrument, and he acknowledged to me that he executed the same.

Cathy L Selchick
Notary Public

CATHY L SELCHICK
NOTARY PUBLIC STATE OF NEW YORK
NO. 4830518
QUALIFIED IN ALBANY COUNTY
COMMISSION EXPIRES NOVEMBER 30 1997

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

On this 15th day of May 1997, before me personally came and appeared Dominick A. Timpano, to me known and known to me to be the individual described in the foregoing Instrument, and he acknowledged to me that he executed the same.

Sandra K Pangburn
Notary Public

SANDRA K. PANGBURN
Notary Public, State of New York
No. 4609220
Qualified in Albany County
Commission Expires January 31, 1998

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

On this 15th day of May 1997, before me personally came and appeared William M. Wallens, Esq., to me known and known to me to be the individual described in the foregoing Instrument, and he acknowledged to me that he executed the same.

Tamara J Austin
Notary Public

TAMARA J. AUSTIN
Notary Public, State of New York
No. 01AU5023031
Qualified in Rensselaer County
Commission Expires 01-31-98