

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD
INTEREST ARBITRATION PANEL

In the Matter of the Arbitration	:	
between	:	
THE CITY OF UTICA,	:	
Public Employer,	:	OPINION
-and-	:	AND
UTICA PROFESSIONAL FIREFIGHTERS ASSN.,	:	AWARD
LOCAL 32, INTERNATIONAL ASSOCIATION OF	:	
FIREFIGHTERS, AFL-CIO-CLC.	:	
Employee Organization.	:	
PERB Case No. IA97-045; M97-065	:	

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

Jane K. Finin, Esq.
Employee Organization Panel Member

James W. Roemer, Jr., Esq.
Employer Panel Member

APPEARANCES:

For City of Utica:
Roemer Wallens & Mineaux LLP
Jeffrey S. Hartnett, Esq., of Counsel

For Utica Professional Firefighters Association:
Grasso & Grasso
John V. Cremo, Esq., of Counsel

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 Utica ("City") and the Utica Professional Firefighters Association ("Union").

The City of Utica is a municipal corporation located in Oneida County, which is in Central New York State. The City has a population currently estimated at approximately 68,000 people, with a land area of 17 square miles.

The Union is the certified bargaining agent for all full-time civil service uniformed and investigative Firefighter personnel, including Firefighters, Lieutenants, Captains, Chief Instructors, Deputy Chiefs and Assistant Chief, a Finance Administrator, Fire Mechanics and Fire Signal Maintenance Workers, exclusive of the Fire Chief. There are currently 139 authorized unit positions, the majority of which are the position of Firefighter.

The last collective bargaining agreement between the parties covered the period commencing April 1, 1989 and ending March 31, 1992.

Thereafter, for the period commencing April 1, 1992 and ending March 31, 1996, the parties were subject to an Interest Arbitration Award (Award dated March 16, 1995; PERB Case No. IA93-032; City Exhibit 5). The Public Panel Chairman of the instant arbitration, Jeffrey M. Selchick, Esq., also served as Chairman for the 1992-96 Interest Arbitration proceeding. The parties did codify the terms of the 1992-96 Interest Arbitration Award into their existing collective bargaining agreement (City Exhibit 4).

Prior to the expiration of the term of the 1992-96 Interest Arbitration Award, the parties commenced negotiations on or about September 30, 1997 for a successor contract. Such negotiations were unsuccessful, and impasse was declared by the Union on or about October 9, 1997. Subsequent mediation by a PERB Mediator was unsuccessful, and on or about February 23, 1998, 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 or about February 26, 1998 (Joint Exhibit 2). On or about June 5, 1998, the Union filed an Amended Petition (see Joint Exhibit 1). No further response was filed by the City.

Thereafter, on or about July 13, 1998, the undersigned Public Arbitration Panel was designated by the Public Employment Relations Board, pursuant to Section 209.4 of the NYS Civil Service Law.

Pursuant to joint agreement of the parties, pre-hearing conferences were held on September 21 and October 5, 1998. Thereafter, hearings were conducted before the undersigned Panel in Utica on December 7 and 10, 1998, and January 4, 1999. At all hearings, both parties were represented by Counsel and by other representatives. Both parties submitted numerous and extensive exhibits and documentation, and both parties presented 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 Session on March 1, 1999, and reviewed all data, evidence, argument and issues. After significant discussion and deliberations at the Executive Session, the Panel members were unable to reach 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 Award¹ as to what constitutes a just and reasonable determination of the parties' contract for the period April 1, 1996 through March 31, 1998.

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.

¹ References from this point forward to the "Panel" refers to the majority of the Panel, consisting of the Chairman/Public Panel Member and the Employer Panel Member.

SALARY

Background on Salary

The Union contends that currently Utica firefighters remain among the lowest paid firefighters when compared to firefighters in similar cities. The Union is seeking an 10% salary increase for each year of the two years covered by this Award.

The City maintains that the current financial situation of the City is poor, and that the City is unable to provide any wage increases for firefighters unless such increases are funded by givebacks from existing benefits enjoyed by the firefighters. Further, the City argues that when viewed against proper comparables, the Utica firefighters are paid within the range of other firefighters, and in some instances, Utica firefighters are paid more than those in other jurisdictions.

A review of the last Interest Arbitration Award for the period 1992-96 indicates that Utica firefighters received a 4% general salary increase effective 4/1/92²; a lump sum payment of \$1500 effective 4/1/93; a lump sum payment of \$1500 effective 4/1/94³; a

² The entry level firefighter salary of \$24,492 was frozen during the term of the 1992-96 Interest Arbitration Award. The entry level firefighter salary is therefore currently \$24,492.

³ As provided in the 1992-96 Interest Arbitration Award, both lump sum payments were in lieu of any percentage increases to salary and both lump sum payments were placed on the salary schedule effective 4/1/95.

3% general salary increase effective 4/1/95; and a 3.5% general salary increase effective 1/1/96.

The result of such salary increases and lump sum payments (subsequently added to the salary schedule) is that the base salary for a Utica firefighter with 5 years of service⁴ was \$36,498 at the expiration of the 1992-96 Interest Arbitration Award on 3/31/96. The Panel herein shall continue to use the Utica firefighter base salary after 5 years of service as the general benchmark for comparison with firefighter salaries in comparable jurisdictions. It was the judgment of the 1992-96 Interest Arbitration Panel that the salary increases provided therein brought the Utica firefighters up to par with the selected comparable jurisdictions.

Comparable Jurisdictions

As previously indicated, the City of Utica has a current population of approximately 68,000 people, and the Utica Fire Department has an authorized complement of 139. In determining the appropriate comparable cities, the Panel has investigated other upstate New York cities with populations equal to or less than Utica. The Panel has also sought to compare the salaries of Utica firefighters with those of firefighters in similar sized

⁴ The Panel has used the 5 year service salary as the benchmark when comparing Utica firefighters with firefighters in comparable jurisdictions. The 5 year benchmark was also used by the Panel in the 1992-96 Interest Arbitration Award.

departments. Finally, the Panel has sought to compare Utica firefighters with those in cities with similar economic problems, and with a population which has per capita income close to that of Utica families.

It is clear that the proper comparables for Utica Firefighters are the New York State cities previously utilized by the 1992-96 Interest Arbitration Panel: Binghamton, Niagara Falls, Rome, Schenectady and Troy. Those cities were carefully selected, and are re-selected herein, because of similarities in size, population, fire department size, and per capita income. All are upstate cities, with similar economic and social problems, and all face a declining resident population, and a declining taxpayer base.

The Panel rejects the Union's argument that the cities of Albany, Rochester and Syracuse should be viewed as additional comparables. None of these cities is comparable to the City of Utica in terms of population, size of the fire department, per capita income or overall economic situation. Statistics indicate that Albany has a population of over 100,00 and a fire department with a complement of 256; Rochester has a population of over 230,000, and a fire department with a complement of 525; and Syracuse has a population of over 163,000, with a fire department complement of 380. All enjoy a much higher per capita income and all have a much different and significantly better economic situation than the City of Utica.

The cities selected, and cited as proper comparables by the 1992-96 Interest Arbitration Panel, are more like Utica in terms of the notable criteria. As previously indicated, Utica has a population of approximately 68,000, with a fire department complement of 139 and per capita income of \$10,700. The City of Binghamton has a population of approximately 53,000, a fire department complement of 142 and per capita income of \$12,100; Niagara Falls has a population of approximately 62,000, with a fire department complement of 142 and per capita income of almost \$11,000; Rome has a population of approximately 45,000, with a fire department complement of 83 and per capita income of slightly over \$11,000⁵; Schenectady has a population of approximately 66,000, with a fire department complement of 117 and per capita income of \$12,500; and Troy has a population of approximately 55,000, a fire department complement of 112 and per capita income of \$11,700 (See City Exhibit 13).

It must be noted that when compared to each of the "comparable" cities, Utica is the most economically distressed. In fact, Utica is currently one of the cities receiving "Aid for Distressed Cities" from the State of New York, as also received by the comparable cities of Niagara Falls and Troy.

⁵ Although smaller than Utica in both population and the size of the fire department, the City of Rome has many similarities with Utica, including geographic location, work force and economic situation.

In reviewing salaries of firefighters in the comparable jurisdictions, the Panel has continued to use the salary of a firefighter with 5 years of service as the benchmark. A comparison shows the following:

As of 3/31/96

Utica	\$36,498
Binghamton	\$38,721
Niagara Falls	\$34,062
Rome	\$36,770
Schenectady	\$40,577
Troy	\$35,200

For 1996, salary increases received by firefighters in the comparable jurisdictions ranged from a 0% increase for Troy firefighters to a split 5% increase for Niagara Falls firefighters. Those increases are included in the salaries shown above.

For 1997, salary increases received by firefighters in the comparable jurisdictions ranged from a 0% increase for Rome and Schenectady firefighters to a 3% increase for Niagara Falls firefighters.

When made, salary comparisons with firefighters in the comparable jurisdictions indicate that Utica firefighters have received salaries equal to or better than those received by firefighters in the comparable cities. Contrary to the claim of the Utica firefighters, there is no great salary inequity evidenced by the comparisons. This is particularly true in light of the current financial situation of the City of Utica.

The Panel also has compared Utica firefighters salaries with those of Utica police, where appropriate. This is particularly important as the salary increases provided to Utica firefighters and police have been generally the same, as the City has sought to maintain parity between the firefighters and police (see City Exhibit 15; 1993-96 Interest Arbitration Award between *City of Utica and John E. Creedon Police Benevolent Association*, PERB Case No. IA93-018; Award dated 11/15/94, Selchick, Panel Chair). During the same two year period for which the instant Panel must determine salaries for Utica firefighters, it is important to note that the Utica police reached agreement with the City and accepted a 3 year agreement which provided a zero salary increase for fiscal year 1996-97 and a 3% salary increase for fiscal year 1997-98 (City Exhibit 14). Such agreement involved a significant giveback in that the police agreed to a new work schedule which the City maintains resulted in savings valued at approximately 3% of police payroll per fiscal year.

The Panel has also considered the salary increases provided to Utica police for 1996 and 1997 as this Panel is of the view that pattern bargaining is a proper managerial concern, and is a well established principle in New York State public sector labor relations (see 1996-97 Interest Arbitration Award between *City of Oneida and Oneida Paid Firefighters Assn., Local 2692*; PERB Case No. IA96-015; Award dated 5/20/97, Selchick, Panel Chair).

Ability to Pay

In reaching the salary determinations herein, the Panel has considered the current state of the City of Utica's economic situation, the economic situation of the surrounding Oneida County area, the overall rate of inflation, raises and salaries received by firefighters in comparable jurisdictions, salary increases received by the Utica police for the same period as covered by this Award, the declining population base of the City, the status of business within the City, as well as revenues from State aid, sales tax and mortgage taxes.

The Panel is of the view that there is little doubt that the City of Utica is in severe fiscal crisis. It is currently attempting to maintain levels of service to its citizens at increasing costs while revenues decrease.

The Panel agrees with the City that its taxpayers have carried a heavy burden over the past decade, and that the economic condition of the City simply does not allow for the high salary increases sought by the firefighters. The City maintains, and the Panel agrees, that the raises sought by the firefighters are way above the rate of inflation and are not within the ability of the City to pay due to the current economic condition of the City. Such significant salary increases are unwarranted when Utica firefighter salaries are compared with those of firefighters in the comparable jurisdictions. Utica salaries are not out of line.

There is no question that Utica must be considered a relatively poor city, consisting of large numbers of retired residents living on fixed incomes, and that it has a declining property tax base. Although people are leaving the City, the services provided by the City have become more expensive. The recent revaluation of the City's real property, as mandated by New York State law, resulted in a loss of \$87 million in assessed value. This confirms that Utica's property tax base continues to decline, and will result in a \$1.7 million revenue loss. In the face of such revenue loss, the City has only two choices: to raise taxes or to reduce expenses.

The Panel agrees that raising taxes is simply not realistic, given the current state of Utica's economy, failing business community, and the general lack of increased employment in the City. As indicated by the high number of property foreclosures, the real estate market in Utica is in terrible shape. Foreclosures have increased each year, and the result of foreclosure is another property which does not generate taxable income for the City. Raising taxes will only serve to increase the number of foreclosures in the City and continue the exodus of taxpayers from the City.

The City has managed to avoid extensive layoffs as a result of State aid provided through the program for Distressed Cities. This recognition by the State that Utica requires such financial help is

not a badge of distinction that any municipality would seek. Aid for Distressed Cities is provided to only those 5-6 cities which are in the worst financial situation. The purpose of such State aid is to allow a municipality to stabilize the financial picture; to do so, a City must act responsibly in terms of spending and cutting costs. This State aid has resulted in a positive fund balance for the City, but such State aid cannot be relied upon as a future revenue source as there is no guarantee that such aid will continue beyond the 1998-99 fiscal year (see City Exhibit 8). Without the current State aid provided, through the Aid for Distressed Cities and as part of the Special Financial Aid provided as a result of surplus State revenues, the City of Utica would be short \$3.5 million in revenue. That would translate to the elimination of \$3.5 million in expenditures and would of necessity entail layoffs of City employees and the loss of many services currently provided by the City. This in turn would result in the loss of additional business and residents, and of course, tax revenue.

Not only have tax revenues decreased, but the City has had a continuing problem in collecting taxes, with uncollected taxes running at approximately 7.12% in 1997-98 (see City Exhibit 8). This remains a long standing problem in the City of Utica and was recognized as such by the 1992-96 Interest Arbitration Panel (see Award, page 20).

The City also continues to have financial problems due to numerous extensive environmental situations and structural repairs which have been pending for several years. The City remains responsible for a landfill remediation which has been estimated to cost \$18 million, and is the site of PCB contamination. The City also may be financially responsible for the clean-up of several toxic former industrial sites.

As a result of such long term and continuing financial problems, the City is not the recipient of any current vote of confidence from the financial community. The bond rating of the City is B2, which is considered to be "junk bond" quality and is presently the lowest rating of any municipality in the State of New York. This continuing financial crisis in Utica received the attention of the New York State Office of the Comptroller, which considered the declaration of a financial emergency situation for the City. This would have resulted in the appointment of a State Control Board. Instead, the State purchased the City's debt, which it was unable to secure funding for through bonds, and established a Private Sector Partnership Board to act as a financial oversight board (see City Exhibit 35). This 11 person Board, consisting of public officials and private sector business representatives, was charged with the responsibility of "developing goals and benchmarks to measure the City's financial progress, and to research savings opportunities through consolidation of services and streamlining of

government." (Id.) If the Partnership Board does not succeed in this goal, it is anticipated that an emergency State Control Board will of necessity be appointed.

In a report issued by the Partnership Board in March 1997, the clear conclusion emerged that the City must reduce the expense of government services if it is to achieve financial stability and allow Utica to become a more competitive and attractive municipality for business and residents. The cost of police and fire services remains the largest expense in the City's budget; almost \$21 million for 1998-99 (see City Exhibit 9; 1998-99 City Budget). It was the view of the Partnership Board that such spending must be contained in order to avoid the need to increase property taxes, which would be a disastrous course of action for the City.

The Panel is of the view that the recommendations of the Partnership Board are well reasoned and represent necessary steps for the City to take in order to attain financial stability. The City has sought to accomplish such recommendations, and the Panel particularly notes the recent settlement with the Utica police which provided for a 0% salary increase for 1996, and a modest 3% salary increase for 1997, funded through savings as a result of scheduling concessions made by the police. This is the level of fiscal responsibility required if the City of Utica is to regain

financial stability and an acceptable credit rating, which are necessary to economic recovery.

The Panel has also reviewed the City's budget for 1998-99 and (City Exhibit 9), as well as the audited financial statement for the period ending 3/31/98 (City Exhibit 11). The Panel has noted Utica's current bond rating, and has reviewed the Official Statement issued in support of \$4,500,000 in Tax Anticipation Notes, which were issued on 11/10/98 (City Exhibit 10). The Panel has also reviewed and considered the City's overall financial status.

It is the finding of this Panel that the current financial situation of the City of Utica prohibits it from providing any salary increases for firefighters unless savings is attained during the period of this Award. In the same manner as the recent settlement with the Utica police, any salary increase must be funded through savings in the existing budget. In the absence of such savings, the City of Utica does not have the ability to provide salary increases to Utica firefighters.

Panel Determination on Salary

The Panel has considered all of the 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.

Therefore, after careful consideration and review of all the data and material presented herein, the Panel has made the following conclusions: that current Utica firefighter salaries are in line with those of firefighters in comparable jurisdictions for the period covered by this Award; that such jurisdictions have provided modest salary increases for the period 1996-97; that the Utica police accepted a 0% salary increase for 1996 and a 3% salary increase for 1997, coupled with scheduling changes which provided sufficient budgetary savings to fund the 3% salary increase; that the settlement reached with the Utica police is significant in the determinations made by this Panel and that the Utica firefighters have not shown compelling reasons why they should receive a greater salary increase than provided to the Utica police; that while the City does have a limited ability to pay salary increases it can provide a similar wage increase to Utica firefighters as provided to the police, conditioned upon similar savings to be gained in the firefighters operational budget; that the determination of the elimination of the manning provision (discussed *infra*) will provide the necessary savings to fund the 3% salary increase for firefighters effective 4/1/97; and that a 3% salary increase effective 4/1/97 for Utica firefighters will provide an equitable wage when compared with that received by firefighters in the comparable jurisdictions.

Accordingly, and after consideration of the extensive 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. There shall be no increase in the salary schedule for the period April 1, 1996 through March 31, 1997.

2. Effective April 1, 1997, salaries for all members of this bargaining unit shall be increased by 3% above the December 31, 1995 rates.

MANNING OF APPARATUS

Background on Manning of Apparatus

Article VI, Section 12 of the 1992-96 contract provides as follows:

Section 12. Manning of Apparatus

A. The CITY agrees that there shall be no less than 9 pieces of apparatus in service commencing April 1, 1987. The CITY further agrees that there shall be no less than 28 men on duty on any given day commencing April 1, 1987.

B. The CITY agrees to have an officer and three men on each apparatus in service each day except in cases of sickness, emergency leaves, compensatory days and vacation.

C. In the event that any company has less than the prescribed number of personnel, off-duty personnel shall be called back to meet the minimum manpower. He shall be paid at this prevailing rate of pay. Such monies shall be paid under the overtime provisions in ARTICLE IV, Sec. 3.

In sum, this contract provision requires the City to have 9 pieces of apparatus in service each day, and no less than 28 men on duty each day. If there are absences, this provision requires that off-duty personnel be called in to replace those absent.

There has been significant litigation regarding this provision including charges of violation of Section 209-a1(d) of the Public Employees' Fair Employment Act; stays of enforcement of the manning provision as obtained in various courts throughout the State; and grievances which have been subject of Demands for Arbitration under the provisions of the collective bargaining

agreement (see City Exhibit 29; Union Exhibits 22A-E). The Panel finds that such litigation is not material to the determinations which must be made in this Award. What is relevant and material is that the City's demand to delete Article VI, Section 12 from the Agreement was found by PERB to be a mandatory subject of negotiation [see PERB Board Decision and Order dated 11/23/98; Case No. U-19829, citing *City of Cohoes and Uniform Firefighters of Cohoes, Local 2562*, 31 PERB ¶3020 (1998)]. Accordingly, the Panel has determined it appropriate to address the City's demand to delete this provision from the Agreement.

The City contends that as a result of this minimum manning provision, it is required to staff the Fire Department at a level higher than required by the operational needs of the Department. The City maintains that it can safely staff at a lower level without jeopardizing the safety of firefighters or the public. The City argues that as a result of this minimum manning provision, it has been denied the ability to properly manage the Fire Department and cut costs, and that it cannot avail itself of technological advances in firefighting equipment and techniques which may reduce manpower needs. Further, the City claims that it is precluded, through the minimum manning provision, from making adjustments in manpower needs to more properly reflect the City's changing population and fire fighting operational needs. Finally, the City

argues that it should have the managerial discretion to balance the level of staffing it can afford with protecting the public safety.

The Union is strongly opposed to any change in the minimum manning provision, and maintains that there is a direct relationship to the minimum manning requirements and firefighter safety. The minimum manning provision has direct impact on safety, speed, effectiveness and the injury rate of firefighters. The high number of injuries sustained at the recent fire on Bleeker Street supports the Union's claim that there is a direct correlation between minimum manning and firefighter safety. On that day, the City was not in compliance with the minimum manning provision and staffed at 24 instead of 28 firefighters. The Union argues that Utica currently ranks second, behind only Niagara Falls, in total fires per capita for 1997, and ranks first in 1998, responding to 3.68 fires per capita. Eliminating or reducing the minimum manning provision would, in the Union's view, result in additional injuries to firefighters, particularly in light of the increase in arson within the City of Utica.

Panel Determination on Manning of Apparatus

The Panel has determined to grant the City's proposal and delete Article VI, Section 12 from the Agreement, for several reasons as detailed below.

First, it is extremely rare to find a minimum manning provision in any of the upstate fire department collective bargaining agreements. Of the selected comparable cities, only the City of Troy contract has a minimum manning provision, and that provides for manning at 22 men per day.⁶ The Panel also notes that the City of Troy currently does not enjoy an enviable financial situation and has resorted to drastic measures, including layoffs of City employees, to meet its budgetary obligations.⁷

Importantly, none of the other comparable jurisdictions have a minimum manning provision in the collective bargaining agreements. Nor do most other fire departments in New York State. Most departments have set minimum manning as a matter of department policy, with management determining the appropriate manning based on operational needs and budgetary concerns.

The absence of a minimum manning provision in the collective bargaining agreements of comparable fire departments reflects a long held view that staffing is a managerial prerogative. It is generally held that staffing relates directly to the manner in which the public employer provides its service to the public and is

⁶ By contract, that number will be reduced to 21 effective 1/1/00.

⁷ The City of Troy is one of the cities receiving NYS Aid for Distressed Cities.

a uniquely management prerogative.⁸ While demands concerning minimum manning provisions have been previously held to be nonmandatory subjects of negotiations, that analysis was overturned by the recent PERB ruling in *City of Cohoes*.⁹

The Panel finds that if the City is to take responsibility for managing its workforce and returning Utica to a position of fiscal soundness, it must have the managerial discretion to determine what staffing is required on a daily basis to meet the operational needs of the Fire Department. The City of Utica has changed greatly in the past decade since the minimum manning provision was placed in the Agreement; and not to the better. Population and resources have seriously declined. The Panel finds that the City must have the ability to determine how best to utilize existing resources and should not be subject to a minimum manning provision which is no longer accurate based on operational needs as assessed by management of the Fire Department. In the final analysis, the Panel is of the view that the City must be given, and must assume, responsibility for determining how many firefighters are necessary to provide for the public safety.

⁸ See generally *Public Sector Labor Law*, 2d Edition (NYSBA: 1998) pp. 469-470.

⁹ *City of Cohoes and Uniform Firefighters of Cohoes, Local 2562*, 31 PERB ¶13020 (1998).

It is the finding of this Panel that the City cannot perform its mission to govern reasonably and manage its workforce, if it is subject to a minimum manning provision. The City must have the right to determine, based on safety concerns, accepted firefighting techniques and operational needs, the appropriate level of staffing. The City cannot continue to be held hostage by a minimum manning provision which does not allow for the exercise of governmental managerial discretion and authority.

Finally, the Panel must consider the overwhelming cost of the maintenance of the minimum manning provision in light of the fiscal crisis which exists in the City of Utica. When the City has complied with the current minimum manning provision of 28 men per shift, the replacement cost has been approximately \$75,000 per month (see City Exhibit 30). As testified to by former City Budget Director Tom Keeler, the City was forced to allocate additional funds to the 1998-99 Fire Department budget to meet the cost of replacement time under the minimum manning provision, which averaged out to approximately \$72,000 per month for fiscal 1998-99, which ended on 3/31/99. The total cost for replacement time under the minimum manning provision was over \$864,000 for fiscal year 1998-99.

The Panel notes that replacement time becomes a "fixed expense" for the City because the City has no control over absences by firefighters and therefore, cannot control how many firefighters

will be have to be called in on an overtime basis to meet the minimum staffing requirement on any given day. In fact, Union President Zumpano testified that in order for the City to meet the existing manning requirement and avoid the daily recall of off-duty firefighters, the City would need to employ 181 firefighters: an additional 42 firefighters above the current authorized complement. Clearly, the City cannot afford such luxury. The record indicates that the City has had to transfer funds to the Fire Department on a continuing basis to fund the cost of such replacement time (see City Exhibits 31A, 31B and 31C). Such expense cannot be allowed to continue if City elected officials and managers are to restore fiscal soundness to Utica.

The Panel has made a considered decision in deleting Article VI, Section 12 from the Agreement effective April 1, 1996, which is the beginning of the term covered by this Award. In doing so, the Panel recognizes that the City should have the managerial right to determine shift size, and further, to accomplish some retroactive savings for the periods when the City was, for one reason or another, not in full compliance with the provision. The Panel intends for the savings generated herein by the deletion of the minimum manning provision to fund the 3% salary increase provided herein, and the increase in stipend provided to certain EMT's (see discussion *infra*).

Award on Manning of Apparatus

Effective April 1, 1996, Article VI, Section 12 of the 1992-96 Agreement shall be deleted in its entirety. That specifically includes paragraphs A, B and C of such section.

EMERGENCY MEDICAL TECHNICIANS

Background on Emergency Medical Technicians

Currently, those members of the unit who are New York State Certified Emergency Medical Technicians (EMT's) and are assigned to Rescue 1 receive a daily stipend of \$20 pursuant to Article IV, Section 1(B)(1) of the 1992-96 Agreement. If there are more than two EMT's assigned to Rescue 1, those assignees over two receive a stipend of \$10 per day.

Additionally, any member of the unit who is an EMT I or II receives a yearly stipend of \$300.00, and any member of the unit who is an EMT III or IV receives a yearly stipend of \$600.00 pursuant to Article IV, Section 1(B)(2) and (3) respectively.

Determination on Emergency Medical Technicians

The stipends provided on an annual basis to EMT's pursuant to Article IV, Sections 1(B)(2) and (3) were significantly increased as a result of the 1992-96 Interest Arbitration Award (see page 30). Those stipends, payable at \$300 per year for EMT's I and II, and at \$600 per year for EMT's III and IV, are generally comparable

to what is paid in the comparable jurisdictions. No change is warranted in view of the current financial circumstances of the City of Utica.

However, the Panel does find that an increase is warranted for those EMT's who are assigned to Rescue 1 and regularly utilize their skills and knowledge on a daily basis. The daily stipend shall be increased, effective 4/1/96, to \$30 per day for those EMT's assigned to Rescue 1. In the event that more than two EMT's are assigned to Rescue 1, the stipend for those assignees over two shall be increased to \$20 per day, effective 4/1/96.

AWARD ON EMERGENCY MEDICAL TECHNICIANS

1. Article IV, Section 1(B)(1) of the 1992-96 Agreement shall be amended to increase the stipend for those EMT's who are assigned to Rescue 1, to \$30 per day, effective 4/1/96. In the event that more than two EMT's are assigned to Rescue 1, the stipend for those assignees over two shall be increased to \$20 per day, effective 4/1/96.

REMAINING ISSUES

Discussion on Remaining Issues

The Panel has reviewed in great detail all of the demands and proposals of both parties, as well as the extensive and voluminous record 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. For the substantive and technical contract changes sought by both parties, the collective bargaining process must be utilized. 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.

DURATION OF CONTRACT

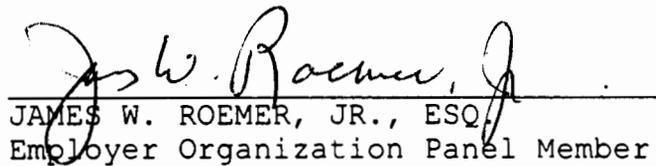
Pursuant to Section 209.4(c) (vi) of the Public Employees' Fair Employment Act, this Award provides for a determination for the period commencing April 1, 1996 and ending March 31, 1998.



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

4/23/99
Date
Of Award

Concur



JAMES W. ROEMER, JR., ESQ.
Employer Organization Panel Member

4/23/99
Date

Dissent

JANE K. FININ, ESQ.
Employee Organization Panel Member

Date

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

On this 23rd day of April, 1999, 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.

Tamara J. Austin
Notary Public

TAMARA J. AUSTIN
Notary Public, State of New York
No. 01AU5023031
Qualified in Rensselaer County
Commission Expires 01-31-2000

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

On this 23rd day of April, 1999, before me personally came and appeared James W. Roemer, Jr., 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 01-31-2000

STATE OF NEW YORK)
COUNTY OF) ss.:

On this day of , 1999, before me personally came and appeared Jane K. Finin, Esq., to me known and known to me to be the individual described in the foregoing Instrument, and she acknowledged to me that she executed the same.

Notary Public