

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD
INTEREST ARBITRATION PANEL

In the Matter of the Arbitration :
between :
THE CITY OF SYRACUSE :
Public Employer, :
-and- :
SYRACUSE FIREFIGHTERS ASSOCIATION, :
LOCAL 280, IAFF, AFL-CIO, CLC, :
Employee Organization. :
PERB Case No. IA200-005; M099-296 :
:

OPINION

AND

AWARD

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

Charles E. Blitman, Esq.
Employee Organization Panel Member

John C. Black, Jr., Esq.
Employer Panel Member

DEC 24 2000

APPEARANCES:

For City of Syracuse:

Bond, Schoeneck & King, LLP
Peter A. Jones, Esq., of Counsel
Prashanth Jayachandran, Esq., of Counsel

For Syracuse Firefighters Association, Local 280, IAFF:

Blitman & King, LLP
Charles C. Spagnoli, 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 ("PERB"), to make a just and reasonable determination of a dispute between the City of Syracuse ("City") and the Syracuse Firefighters Association, Local 280, IAFF, AFL-CIO, CLC ("Association").

The City of Syracuse is a municipal corporation located in Onondaga County and is currently the fifth largest city in New York State. The City encompasses over 25 square miles in the north central portion of New York State near Lake Ontario. The City's population is approximately 165,000. The City is the major component in the Syracuse Metropolitan Statistical Area (MSA), which had a total estimated population of approximately 750,000 as of July 1, 1998 (Official Statement dated April 18, 2000; City Exhibit 2-8).

The Association is the certified bargaining agent for all Civil Service Firefighters employed in the Fire Department of the City, exclusive of the Fire Chief, the First Deputy Fire Chief and Deputy Chiefs and all civilian employees of the Department.

At the present time, the Syracuse Fire Department ("Department") is comprised of approximately 374 full-time positions.

The last collective bargaining agreement between the parties covered the period which commenced on January 1, 1993 and ended on December 31, 1993. Thereafter, the parties were subject to an Interest Arbitration Award for the period which commenced on January 1, 1994 and ended on December 31, 1995. The parties then agreed to terms and conditions of employment for the period which commenced on January 1, 1996 and ended on December 31, 1997, but no final agreement was ever executed. The parties have been utilizing the most recent draft agreement for the period January 1, 1994 and ended on December 31, 1997 (Union Exhibit 1-A). For the period which commenced on January 1, 1998 and ended on December 31, 1999, the parties were subject to an Interest Arbitration Award, as modified (Union Exhibits 1-B and 1-C; Markowitz Awards¹).

Prior to the expiration of the term covered by the 1998-99 Markowitz Interest Arbitration Award, the parties began negotiations for a successor contract, but such negotiations were unsuccessful. Thereafter, acting pursuant to the rules of procedure of PERB, impasse was declared and a PERB appointed Mediator met with the parties. Mediation was also unsuccessful, and on May 11, 2000, the Association filed a Petition for Interest Arbitration (Joint Exhibit 1) pursuant to Section 209.4 of the Civil Service Law.

¹ *Matter of Syracuse Firefighters Association, Local 280, IAFF and City of Syracuse*, PERB Case No. IA97-044; M97-331; Award dated 1/25/99 and modified 3/16/99.

The City filed a Response to said Petition on May 19, 2000 (Joint Exhibit 2), and thereafter, on June 13, 2000 the undersigned Public Arbitration Panel was designated by PERB, pursuant to Section 209.4 of the NYS Civil Service Law, for the purpose of making a just and reasonable determination of this dispute.

A hearing was conducted before the undersigned Panel in the City of Syracuse on June 21, 2000. At the hearing, both parties were represented by Counsel and by other representatives. Both parties submitted numerous and extensive exhibits and documentation, including briefs, and both parties presented extensive arguments on their respective positions.

Thereafter, the Panel fully reviewed all data, evidence, argument and issues submitted by both parties. After discussion and deliberations at the Executive Sessions, held on July 31 and October 30, 2000, this Panel reached agreement on the terms of this Interest Arbitration Award. At the request of the parties, a Summary of Award was issued on November 7, 2000 with the understanding that the Opinion would follow. That Opinion is set out herein, along with the 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.

Accordingly, 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, 2000 through December 31, 2001.

In arriving at such determination, the Panel has specifically reviewed and considered the following factors, as detailed 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.

COMPARABILITY

Section 209.4 of the Civil Service Law requires that in order to properly determine wages and other terms and conditions of employment, the Panel must engage in a comparative analysis of terms and conditions with "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."

The Association contends that Syracuse firefighters should be compared only with firefighters in the other large upstate cities of Albany, Buffalo and Rochester. Further, it is the position of the Association that the Taylor Law requires that Syracuse firefighters be compared only to other firefighters and not to civilian employees of cities or private sector employees. The Association has presented current collective bargaining agreements governing terms and conditions of employment for firefighters in Albany, Buffalo and Rochester, for review by the Panel.

The City maintains that in determining the appropriate comparables for Syracuse firefighters, the Panel should look at Albany, Buffalo and Rochester, but should look beyond those cities as well. The City argues that a more appropriate comparison for Syracuse police would be to review the universe of the ten largest upstate cities including Syracuse: Albany, Binghamton, Buffalo, Niagara Falls, Rochester, Rome, Schenectady, Syracuse, Troy and Utica.

Panel Determination

The issue of appropriate comparables for Syracuse firefighters was addressed by Arbitrator Markowitz in his Award for 1998-99. As indicated by Arbitrator Markowitz:

"Where applicable the panel, or a majority thereof, has given great weight to comparative data. The Award, therefore, attempts to reflect the contracts and settlements in communities similar to the City of Syracuse. The panel, or a majority thereof, has used the cities of Buffalo, Rochester and Albany as the cities most comparable to Syracuse. It has given little weight to data regarding other communities."
[Markowitz Award, 1/25/99 at p.2]

This Panel agrees with the Markowitz Panel that the most appropriate comparable fire departments to Syracuse are those of the larger upstate cities of Albany, Buffalo and Rochester. The comparison of the major upstate cities as the primary comparables is based on the fact that the population, size of fire departments, urban setting, and other overall similarities are greater with Albany, Buffalo and Rochester than with the other upstate cities offered as comparables by the City.

Syracuse has a population of approximately 165,000 people with a fire department of approximately 374 full-time members. Buffalo is of course the largest of the upstate cities, with a population of approximately 328,000 and a fire department of approximately 865 full-time members; Albany has a population of approximately 95,000 with a fire department of approximately 260 full-time members; and

Rochester has a population of approximately 232,000 people with a fire department of almost 550 full-time members.

Accordingly, the Panel finds that the appropriate comparables to Syracuse firefighters are firefighters employed by the upstate cities of Albany, Buffalo and Rochester.

WAGES AND ABILITY TO PAYAssociation Position

The Association maintains that the City is in a strong financial position and clearly has the financial ability to pay for fair and equitable increases, which it has requested in the nature of a 5% salary increase for each of the two (2) years to be covered by this Interest Arbitration Award. The Association contends that the evidence presented at the arbitration clearly establishes that the City is in sound financial health. Notwithstanding the financial strength of the City, Syracuse firefighter salaries have lagged behind those of firefighters in the comparable cities. The Association argues that such wage increases are necessary so that Syracuse firefighters can begin to catch up to salaries enjoyed by firefighters in the comparable cities of Albany, Buffalo and Rochester.

At the expiration of the Markowitz Award on 12/31/99, the top salary for a Syracuse Firefighter was \$41,880, while for the same time period, the top salary for an Albany Firefighter was \$42,714; Buffalo at \$46,045 and Rochester at \$46,311. A review of recent bargaining agreements/arbitration awards indicate that Albany Firefighters have negotiated increases so that the top salary in year 2000 is \$44,104 and in year 2001 is \$45,427; Buffalo Firefighters received a 3% increase effective 7/1/99 and are currently in negotiations/interest arbitration for a successor

agreement/award for the period which commenced 7/1/00; and Rochester Firefighters are awaiting ratification of a tentative agreement for the period which commenced 1/1/00, which provides for a 2% raise effective 1/1/00, 2% effective 1/1/01, 3% effective 7/1/01 and 3% effective 7/1/02.

The Association argues that at all levels of salary, Syracuse firefighters lag behind their counterparts in Albany, Buffalo and Rochester. The Association maintains when compared with firefighters in the cities of Albany, Buffalo and Rochester, Syracuse firefighters are behind 10.1% for 1999 alone, and fall further behind in the years 2000 and 2001. This is especially unfair given the fact that Syracuse firefighters reach their top step after 5 years of service, while firefighters in Rochester reach the top step after only 2.5 years of service. Additionally, Syracuse firefighters have responded to more than 20,815 alarms in 1999; more than double the number of alarms in 1983. With the increased demand in emergency medical service calls, Syracuse firefighters have been among the most active in the state. They are also the most professional; the Syracuse Fire Department is the only Class 1 fire department in New York. The Association maintains that the increases it seeks are justified and necessary in order to allow Syracuse firefighters to earn a comparable wage as enjoyed by firefighters in the other upstate comparable cities.

In terms of ability to pay, the Association maintains that the City's economic outlook is extremely positive. The Mayor himself has indicated that "Economically, Syracuse is certainly on the move."² The Association contends that both sales tax revenues and potential property tax revenues have substantially increased. In June 2000, as a result of the action of the Onondaga County Legislature, the City is to receive a guarantee of \$47.5 million per year; which is \$2.3 million more than was anticipated in the City proposed budget for 2000/01. The City's share of sales tax revenue is to increase by as much as 2% per year while City residents are paying less in City and County taxes due to reductions by the County Legislature which have been matched by the City.

Additionally, the Association claims that the major projects involving construction and new business development which are currently taking place in Syracuse further support the City's economic vitality. Low unemployment and lower taxes will continue to have a positive impact on the City's economic growth.

As indicated, the Association maintains that salaries of Syracuse firefighters lag behind salaries of firefighters in comparable communities and that the City has the financial ability to provide necessary raises and other increases sought by the Association herein.

² "The State of the City Address" delivered by Mayor Roy Bernardi on February 9, 2000.

City Position

The City maintains that it is facing serious financial challenges for 2000-01 and beyond. The City is in a difficult financial position as it faces a shrinking population and tax base, decreasing sales tax revenues and a speculative future of State aid payments. It is with this backdrop that the Syracuse firefighters seek significant salary and other increases. The City argues that Syracuse cannot be accurately compared with Albany, Buffalo and Rochester only, as it is considerably less expensive to live in Syracuse than in the other upstate cities (City Exhibit 1, p.35). Appropriate to such cost of living, is the fact that Syracuse firefighters do earn less than firefighters in the more expensive to live upstate cities. Comparison with Albany, Buffalo and Rochester firefighter salaries, as well as with the remaining upstate cities of Binghamton, Niagara Falls, Rome, Schenectady and Troy, indicates that Syracuse firefighters are right in the middle in terms of salary, which is exactly where they should be (City Exhibit 1, p.39). While a Syracuse firefighter at top salary earned less as compared to counterparts in Albany, Buffalo and Rochester, the City maintains that relative structure is correct based on the overall wealth and economic living standards of each city. It is the position of the City that while Syracuse firefighters are entitled to modest salary increases, they are currently paid a comparable wage.

In terms of financial ability to pay, the City maintains that a major source of revenue for the General Fund is the property tax, which has been steadily declining, in conjunction with the City population. It cannot be ignored that since 1990, the City has cut 305 employees from the City payroll. The City has also suffered a decrease in bond ratings, with Standard & Poor's rating currently at the less than good rating of BBB, and Moody's at Baa1 (see City Exhibit 1.25). These are objective facts regarding the City's financial plight and reflect independent evaluation that the City's financial condition has "stabilized" following years of "financial stress." The City argues that it must continue to avoid deficit spending if it is to improve its bond rating, which is only one level above the junk bond rating.

The City indicates that the largest source of revenue funding City operations is the City's share of the 3% Onondaga County sales tax, which provides nearly 33% of General Fund revenues. Due to changes in sharing formulas, the City has been capped in how much sales tax revenue it will receive each year for the next ten years. While the City is guaranteed to receive at least \$47.5 million in sales tax revenues, such share cannot grow more than 2% a year for the next ten years, even if the County's sales tax revenues grow more than 2% each year. Thus, the City's share of future sales tax growth is capped at 2% each year and will not increase at a level sufficient to fund the significant salary increases sought by police, fire and other City employees. When viewed with the

declining City population and tax base, the City must budget modestly in order to maintain a balanced budget and to avoid cutting essential City services and/or personnel.

Additionally, the City is heavily dependent on State aid to support the City's General Fund. State aid is unpredictable and cannot be relied upon to support significant firefighter salary increases. While the City has managed to close the budget gap for 2000-01, it must look ahead to capped sales tax revenues, decreased population and a decreasing tax base, and tenuous State aid projections. Traditional sources of revenue will not provide increased growth. Higher taxes will result in an ever increasing loss of population and will further depress the existing tax base. Household income has declined to 61% of the State's average and per capita income remains below the State average of 66.5%. In sum, the City is unable to afford the large wage and benefit increases sought by the Association.

The City is aware of the long history of parity which has existed for firefighters and police and has offered both groups the same increases for the term covered by this Award. The City recognizes the important and professional services provided by Syracuse firefighters and has offered a general wage increase of 3% effective July 1 of each contract year. The City maintains that it simply cannot afford to provide more and still provide responsible financial leadership for City residents.

Panel Determination

As indicated *supra*, it is the finding of this Panel that the appropriate comparables for Syracuse firefighters are the upstate cities of Albany, Buffalo and Rochester. Although there are differences in all in terms of population, geographic size, tax base and revenues, and complement of the fire departments, the larger upstate cities remain the best comparables as contemplated by the Taylor Law. In terms of salary, it is clear that Syracuse firefighters are the lowest paid when compared with Albany, Buffalo and Rochester.

The Panel has also considered the fact that there is a long history of parity between City police and fire. For over 20 years, the City and police and fire interest arbitrators have applied the principal of parity to economic items between police and fire. As stated by Arbitrator Eischen in the 1979-80 police interest arbitration:

"In one particular respect, however,--across-the-board increases--the pattern of absolute equality has prevailed since the bargaining relationship began."

This Panel respects the history of economic parity between Syracuse police and fire and finds that the financial increases provided to Syracuse police in the recent interest arbitration Award for 2000-01 must be equally provided to Syracuse firefighters.

Accordingly, as it did for Syracuse police for the same time period, this Panel finds that a one-time salary adjustment is necessary in order to place Syracuse firefighters in a more appropriate comparable position with firefighters in Albany, Buffalo and Rochester.

Therefore, the Panel finds that there shall be a Public Safety Wage Adjustment for all unit members, consisting of a \$500 payment added to base salary effective 1/1/00 and a \$750 payment added to base salary effective 1/1/01. Such Public Safety Wage Adjustments are based on the comparables, and are in recognition of the necessary and dangerous work performed by Syracuse firefighters. As it did in the Syracuse police Award, the Panel finds that these Public Safety Wage Adjustments shall serve to bring Syracuse firefighters into a more appropriate comparable position in terms of comparison with firefighter salaries in Albany, Buffalo and Rochester. Such Public Safety Wage Adjustments shall be added to base salary and shall be therefore subject to the across the board general wage increases also provided herein.

Additionally, the Panel has considered the appropriate general wage increases to be provided to Syracuse firefighters. In reaching the conclusions herein, the Panel has reviewed all relevant financial data of the City, including the Official Statement accompanying the issuance of Public Improvement Bonds and Various Purpose Notes in the amount of \$23,852,000 in April of 2000, which

indicates that the City has made great progress in providing a balanced budget and operating within existing revenues. The Panel has also reviewed the current budget for 2000-01, and has also reviewed and considered the constitutional debt limits and margins, based on statistics compiled by the NYS Office of the State Comptroller. The Panel has noted that while the minimum recommended General Fund balance should be in the range of 5% to 8%, the City now has less than 4% in fund balance. Such monies cannot be used to fund increases for Syracuse firefighters. Nor is the City currently in a position to raise property taxes to generate additional revenues.

The Panel is aware that the Public Safety Wage Adjustments provided herein were not anticipated by the City and will have to be taken out of either fund balance or contingency funds. With this in mind, the Panel finds, as it did in the Syracuse police Award, that the City can only additionally afford the modest 3% across the board salary increases which it has previously budgeted for Syracuse firefighters.

In making the salary determination herein, the Panel has carefully considered all of the financial 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.

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 PUBLIC SAFETY WAGE ADJUSTMENTS AND SALARY INCREASES

1. Effective January 1, 2000, and retroactive to that date, a Public Safety Wage Adjustment of \$500 shall be added to the base salary schedule for all unit members.

2. Effective July 1, 2000, and retroactive to that date, the base salary schedule for all unit members shall be increased by 3%.

3. Effective January 1, 2001, a Public Safety Wage Adjustment of \$750 shall be added to the base salary schedule for all unit members.

4. Effective July 1, 2001, the base salary schedule shall be increased by 3%.

5. The City shall utilize best efforts to provide all retroactive pay provided herein to unit members no later than 12/20/00.

NIGHT PREMIUM PAY

Discussion on Night Premium Pay

Currently, Article 12.4 of the Agreement provides that Syracuse firefighters receive night premium pay of \$.20 per hour for work performed between the hours of 4:00 p.m. and 8:00 a.m., provided at least six hours per day are worked during these hours on a regular shift basis. This amount has not been increased since 1/1/95.

The Panel notes that Syracuse police receive a similar benefit (Night Shift Differential) and that the Panel recently awarded an increase in such benefit. In accord with the historical parity existent between the Syracuse police and fire, the same increase shall be provided to Syracuse firefighters.

AWARD ON NIGHT PREMIUM PAY

1. Effective 1/1/01, night premium pay of \$.40 per hour shall be paid for all work performed between the hours of 4:00 p.m. and midnight, provided at least six hours per day are worked during these hours on a regular shift basis.

2. Effective 1/1/01, night premium pay of \$.50 per hour shall be paid for all work performed between the hours of Midnight and 8:00 am., provided at least six hours per day are worked during these hours on a regular shift basis.

ELIMINATION OF SEPARATE CHECKS

Discussion on Elimination of Separate Checks

Currently, Syracuse firefighters receive payment by separate check for night premium pay, uniform allowance, holiday pay and sick leave incentive payments. Such separate checks require additional administrative work and payroll processing and costs the City approximately \$3,500 per year. Such savings can be applied toward providing the increased night premium pay provided herein.

AWARD ON ELIMINATION OF SEPARATE CHECKS

Effective 1/1/01, the City will no longer issue separate checks for night premium pay, uniform allowance, holiday pay or the sick leave incentive payment. All such monies shall be paid as part of the regularly issued paycheck paid on the date closest to the due date for the aforementioned payments.

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. Thus, we make the following award on these issues:

AWARD ON REMAINING ISSUES

Except for those proposals and/or items previously agreed upon by the parties herein, 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 recommends that the parties herein revise the draft Agreement in accordance with the provisions of this Award, and prepare and execute a document which reflects the provisions of this Award.

DURATION OF CONTRACT

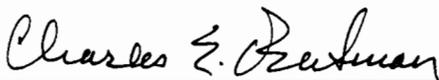
Pursuant to the provisions of Civil Service Law Section 209.4(c)(vi) (Taylor Law), this Award provides an Agreement for the period commencing January 1, 2000 and ending December 31, 2001.



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

11-27-00
Date

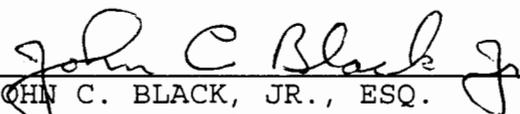
~~[Concur]~~
[Dissent]



CHARLES E. BLITMAN, ESQ.
Employee Organization Panel Member

11/30/00
Date

[Concur]
~~[Dissent]~~



JOHN C. BLACK, JR., ESQ.
Employer Panel Member

11-30-00
Date

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

On this 27th day of November 2000, 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.



Notary Public

CATHY L. SELCHICK
NOTARY PUBLIC STATE OF NEW YORK
NO. 4830518
QUALIFIED IN ALBANY COUNTY
COMMISSION EXPIRES NOVEMBER 30 01

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

On this 30th day of ~~NOVEMBER~~ 2000, before me personally came and appeared Charles E. Blitman, 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.

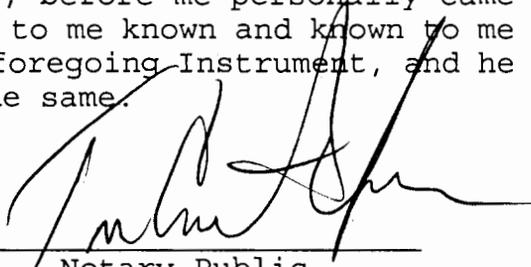


Notary Public

ROSANNE C. CANESTRARE
NOTARY PUBLIC, STATE OF NEW YORK
Qualified in Onondaga County No. 4778058
My Commission Expires Sept. 30, ~~2001~~ 2002

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

On this 30th day of November 2000, before me personally came and appeared John C. Black, 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.



Notary Public

TERRI E. CONTI
Notary Public, State of New York
No. 43-4941904
Qualified in Richmond County
Commission Expires Sept. 6, 2002