

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of Interest Arbitration

between

City of Rochester

and

Rochester Firefighters Association
International Association of Fire Fighters
Local 1071

Opinion

and

Award

(PERB Case No. IA2010-005)

* * * * *

Having determined that a dispute continues to exist in negotiations between the City of Rochester and the Rochester Firefighters Association, the New York State Public Employment Relations Board designated a Public Arbitration Panel for the purpose of making a just and reasonable determination of the dispute. The designated Panel comprises Sharon A. Burke as the Public Employer Panel Member; James A. McTiernan III as the Employee Organization Panel Member; and Howard G. Foster as the Public Panel Member and Chairperson. The City was represented by Yvette Chancellor Green, Municipal Attorney, and the Union by Lawrence J. Andolina, Esq.

BACKGROUND

The previous Collective Bargaining Agreement (CBA) between the parties expired on June 30, 2008. Negotiations for a successor agreement began in March 2008. Impasse was declared in June 2008 and a mediator assigned by PERB. An important agreement on health care was reached in August 2009, but the parties were unable to reach a settlement on several other issues. Negotiations continued until May 2010,

when the City filed a petition for interest arbitration. The Arbitration Panel was appointed on June 22, 2010, but the process was delayed as resolution of certain Improper Practice charges was awaited. The Panel met with the representatives of the parties on February 23, 2011, to ascertain a mutual understanding of the issues to be arbitrated and to set a process for the interest arbitration. The deliberations of the Panel were further delayed as the parties continued their efforts to find a mutually satisfactory resolution.

The parties have in fact been able to resolve most of the issues still unsettled at the time impasse was declared. They have also agreed that any proposals not addressed below and not previously agreed to are withdrawn, with current contract language on those issues, if applicable, continued. In particular, since the previous agreement expired in 2008, and a short-term award would leave the parties with no prospective resolution, they have agreed on the desirability of a determination of contract terms for five years, with two of those years prospective. Accordingly, they have authorized the Panel to fashion an award covering the period July 1, 2008, to June 30, 2013.

The Award below is unanimous and sets forth the Panel's determination of a just and reasonable resolution of the remaining unsettled issues. There are six of them in all, and they are addressed in the order of their appearance in the CBA. For each issue, we cite or summarize the current contract language; indicate the parties' positions; present our analysis; and set forth our determination.

AWARD

Salary Schedule (Article 2, Section 1)

This provision sets forth salaries for Fire Fighter, Fire Lieutenant, Fire Captain, and Battalion Chief, with step increases based on years of service. The most recent schedule, for 2007-2008, contains salaries ranging from \$34,428 (for a starting Fire Fighter) to \$87,838 (for a top-step Battalion Chief).

The Union initially proposed across-the-board increases of 6.0 percent for three years, although as indicated above it is now agreeable to a five-year agreement. The City contends that increases of this size are excessive, well above prevailing settlements and awards, and beyond its ability to pay. The City states that it has budgeted and encumbered sufficient funds to pay 3.0 percent increases for 2008-2009 and 2009-2010 and 2.5 percent for 2010-2011, but with recent adverse developments in the financial picture of the City of Rochester and the State of New York, similar increases in the last two years of the Agreement would be onerous. It argues that its anticipated resources will permit salary increases of 1.0 percent for 2011-2012 and 2012-2013. The City also notes that salary increases for the Firefighters have traditionally exhibited parity with those of the Rochester Police, and the increases it proposes are equal to those that the police will receive. For its part, the Union agrees that parity with police salaries are important, and while it believes that higher increases are merited for the critical work performed by firefighters, it does not challenge the City's assessment of its ability to pay.

The Panel is aware of the importance that parity between firefighters and police often plays in municipal labor relations. We are also aware of the conditions that have

challenged municipal budgets all across the state (and indeed the nation), and we are persuaded that retroactive across-the-board salary increases of more than 2.5 or 3.0 percent in the first three years of the contract would not be warranted. Further, as the general fiscal picture for 2011-2012 and 2012-2013 has darkened, the Panel is persuaded by the City's argument that more modest increases for the last two years of the Agreement are called for.

The Panel further observes that the increases for which the City has budgeted, and for which it has the ability to pay, are also in line with prevailing settlements and awards in other paid fire departments with which Rochester may be properly compared. As for the resulting salaries if the City's proposal is implemented, the Panel notes that salary comparisons for firefighters are difficult to make, as broadly-defined compensation structures in fire departments tend to be complex. However, based on the information provided by both sides, the Panel finds that salaries in Rochester, including the adjustments awarded here, are not out of line with those found in other fire departments in Monroe County (including some with greater resources than Rochester's) and other large-city departments in upstate New York. In sum, based on parity with Rochester Police, relevant comparisons with other firefighters, and the City's ability to pay, the Panel finds that the following Award represents a just and reasonable determination of the salary schedule:

The salary schedules in Article 2, Section 1, shall be adjusted to reflect the following percentage increases:

<i>2008-2009</i>	<i>3.0 percent</i>
<i>2009-2010</i>	<i>3.0 percent</i>
<i>2010-2011</i>	<i>2.5 percent</i>
<i>2011-2012</i>	<i>1.0 percent</i>

2012-2013 1.0 percent

The above salary increases shall be retroactive for active-duty personnel and retired personnel who retired on or after July 1, 2008.

Parity Allowance (Article 2, Section 7)

The CBA provides for a "parity allowance" to reconcile past differences in settlements between the Firefighters and Police. It reads as follows:

There shall be a 2.5% annual "Parity Allowance" effective January 1, 1996. The payment of the allowance shall be in lump sum, no later than February 15 following the calendar year in which the allowance was earned. Parity allowance shall not be added to base salary.

In 2006-2007, the increases received by Police were more generous than those received by Firefighters. The Union has proposed an additional base-pay increase to compensate firefighters for the difference. The City contends that parity was broken in a negotiated collective bargaining agreement with the Firefighters, and while it is willing to agree to some parity adjustment, its fiscal situation does not permit the increase to take the form of an additional increase in every year of the contract. On this point, the Union contends that, in fact, parity was broken when the Rochester Police Locust Club received split wages in an arbitrated award.

The Panel finds that the Union's objective in sustaining parity is reasonable and should be accommodated to the extent possible, but it is also sensitive to the fiscal implications of awarding additional parity money for all of the five-year agreement. Accordingly, the Panel awards the following, to be added to the language of Article 2, Section 7:

Effective for the period July 1, 2012 to June 30, 2013, an additional 1.6% "Parity Allowance," on top of the 2.5%, shall be paid as a lump sum to

each unit member. The payments for this additional allowance shall be as follows:

*For the period 7/1/12 to 12/31/12 — payment no later than Feb. 15, 2013
For the period 1/1/13 to 6/30/13 — payment no later than Feb. 15, 2014*

Consecutive Work Hours (Article 14, Section 5)

Article 14 deals generally with work hours. The City proposes a new clause that would impose a limit on the number of consecutive hours a firefighter could work, with the straightforward rationale that a fatigued firefighter raises a safety concern for the firefighter, his or her colleagues, and the public. The Union agrees that there is a safety issue with too many consecutive hours, and that the parties did not anticipate some firefighters working so many hours in a row.

The Panel is persuaded that some language on this issue is warranted, and that based on the firefighters' work schedules, there is no compelling argument against the limits proposed by the City. Further, we believe it is appropriate to require firefighters to track their own work hours and to alert their Commanding Officers when they are approaching or exceeding their limit. Accordingly, we award as follows:

A new provision at Article 14, Section 5, titled "Consecutive Work Hours," shall be added to the contract, reading as follows:

No member may work more than 38 consecutive hours, and the member shall be required to have a minimum of eight (8) hours of non-work time before commencing any additional duty hours. It shall be the member's responsibility to notify his/her Commanding Officer should the member believe that he/she may be in violation of this section. Refer to Article 17, Section 7.C of this document for applications of this section as it relates to overtime opportunities.

Exceptions to this section may be allowed at the sole discretion of the Fire Chief or designee.

New Educational Incentive (Article 16, Section 4)

Article 16 provides for tuition reimbursement and other educational incentives (including salary enhancements) for firefighters who pursue additional schooling. Incentives contained in Section 2 and 3 have certain eligibility requirements. Section 4 provides incentives for firefighters ineligible for the other ones. The Union proposes certain changes that would broaden the benefit by covering a wider range of educational programs and increase the monetary reward. The Union also wishes to attain parity with the Police in this area. The City opposes the changes as proposed because of their financial impact and because it believes that educational efforts should be supported only when they are directly related to the firefighter's job.

The Panel finds that this is an area where compromise is indicated, as the purpose is a worthy one but the economic implications must also be considered. Accordingly, we award as follows:

Article 16, Section 4 (New Educational Incentive) shall be revised so as to provide an equivalent educational incentive benefit as that received by the Locust Club. This change in educational incentive will be effective prospectively upon the issuance of this Award. The revised provision shall read as follows:

Those not eligible for educational incentives under Sections 2 and 3 (above) are eligible for the following:

A. Two percent (2%) of the member's base rate for the receipt of an Associate's degree in Fire Science, Fire Administration, RN, or EMT-P disciplines. Any member who is receiving this 2% incentive as of May 1, 2011, will be grandfathered in and will continue to receive it.

B. Four percent (4%) of the member's base rate for members who hold or attain a Bachelor's degree in any subject.

C. Courses of study under this section must be approved and accredited by the New York State Board of Regents. These incentives shall start on the next full payroll period following the presentation of official documentation of the degree to the employer.

Overtime Substitutions (Article 17, Section 9)

When overtime is required, there is a system based on seniority and prior overtime worked that determines which member will be assigned. The overtime-substitution provision states that overtime is the property of the member and may be reassigned (“passed”) by him or her to another member. The City proposes to delete this provision because of its potential for pension-padding. The Union argues that there is no evidence of abuse of this provision, and that there are legal limits on overtime.

The Panel finds that the perceived unintended consequences of this provision are speculative, are not readily quantifiable, and may well be exaggerated, and we do not see the case for deleting the clause. However, we do see some potential for abuse here. Accordingly, we believe a reasonable compromise is order, specifically a limit on the amount of assigned overtime that can be passed. We therefore award as follows:

The language of Article 17, Section 9 (Overtime Substitutions) shall be revised by adding the following as the last sentence to this provision:

A member is limited to receiving 100 hours of passed overtime per year.

Regularly Scheduled Medical Exams (Article 31, Section 4)

This provision permits members to have their personal physician conduct the regularly scheduled medical exam, with the results reported to the Fire Surgeon. The City proposes deleting this section in the interest of consistency and standardization in conducting these exams. While the Union initially favored allowing members to keep the

option, with experience rating of its medical plan it sees an economic benefit to having all exams conducted by the Fire Surgeon. Accordingly, we see merit in the desire for uniformity and no compelling reason not to adopt the City's proposal. We therefore award as follows:

Article 31, Section 4, shall be deleted in its entirety from the Collective Bargaining Agreement.

The foregoing Award is concurred in by all members of the Public Arbitration Panel, whose signatures are affixed below.

Sept. 1, 2011
(dated)

Howard G. Foster
Howard G. Foster
Public Panel Member and Chairperson

Sept. 8, 2011
(dated)

Sharon A. Burke
Sharon A. Burke
Public Employer Panel Member

September 8, 2011
(dated)

James A. McTiernan III
James A. McTiernan III
Employee Organization Panel Member