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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

JUN 02 2014

In the Matter of the Interest Arbitration

CONCILIATION

between

**Rome Professional Firefighters Association
Local 694, AFL-CIO**

*
* DISCUSSION

*
* AND

and

City of Rome

*
* AWARD

PERB Case No: IA2013-001 M2012-304

Before:

Ronald E. Kowalski, Ph.D.
Arbitrator

Gregory A. Mattacola, Esq.
Public Employer Panel Member

Mimi C. Satter, Esq.
Public Employee Organization Panel Member

APPEARANCES

For the Public Employer
Timothy A. Benedict, Esq.

For the Public Employee Organization
Sarah Ruhlen, Esq.

INTRODUCTION

On June 12, 2013 the New York State Public Employment Relations Board (hereinafter "PERB") having determined that a dispute continued to exist in negotiations between the City of Rome (hereinafter "City") and the Rome Professional Firefighters Association (hereinafter "Union"), and acting under the authority vested in it under Section 209.4 of the Civil Service Law, designated the above-listed Public Arbitration Panel for the purpose of making a just and reasonable determination of the dispute.

On December 6, 2013 and January 10, 2014 hearings were held in the City of Rome, New York. Representatives appeared before the Panel, which received exhibits, contracts, demonstrative evidence and testimony. After submission of all supporting evidence, the parties agreed the hearing was closed and briefs were submitted to the Panel on February 21, 2014. The Panel met in Executive Session on March 11, 2014 and held subsequent discussions on the outstanding issues resulting in this Award.

THE STATUTORY STRUCTURE

Subdivision 4 of Section 209 of the Civil Service Law was enacted to provide a means for resolving negotiation impasses between public employers in New York State and police and firefighters, as defined in the statute. Subdivision 4 provides that, when PERB determines that an impasse exists, it shall appoint a mediator to assist the parties to effect a voluntary resolution of the dispute. If the mediator is unsuccessful within a stated period, either party may petition PERB to refer the dispute to a Public Arbitration Panel.

Section 205.4 of PERB's Rules and Regulations promulgated to implement Subdivision 4 of Section 209 requires that a petition requesting referral to a Panel contain:

- (3) A statement of each of the terms and conditions of employment raised during negotiations, as follows:
 - (i) terms and conditions of employment that have been agreed upon;
 - (ii) petitioner's position regarding terms and conditions of employment not agreed upon.

The response to the petition must also contain respondent's position specifying the terms and conditions of employment that were

resolved by agreement and, as to those that were not agreed upon, respondent shall set forth its position.

The Public Arbitration Panel shall then hold hearing on all matters related to the dispute and all matters presented to the Panel shall be decided by a majority vote of the members of the Panel.

The Panel is directed to make a just and reasonable determination of the matters in dispute. The statute spells out the following criteria, which must be taken into consideration, when relevant:

In arriving at such determination, the Panel shall specify the basis for its findings, taking into consideration, in addition to any other relevant factors, the following:

- 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 qualification;
 - (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.

The Panel's determination is final and binding upon the parties for the period prescribed by the Panel.

BACKGROUND FACTS

A Collective Bargaining Agreement existed between the parties from January 1, 2009 through December 31, 2010. The parties are and have been without a new agreement since the expiration of the Collective Bargaining Agreement. Representatives of the parties met in an attempt to reach a negotiated agreement with respect to the terms and conditions of employment. The parties did not reach an agreement and the Union filed a Declaration of Impasse. The New York State Public Employment Relations Board appointed a mediator and mediation sessions were conducted in 2013. The parties were,

however, unable to reach an agreement and subsequently, the Union filed for compulsory interest arbitration on or about April, 2013.

Pursuant to the provisions of Civil Service Law Section 209.4 the New York State Public Employment Relations Board ("PERB") designated the undersigned on June 12, 2013 as the Public Arbitration Panel for purposes of making a just and reasonable determination on the matters in dispute between the City of Rome and the Rome Professional Firefighters Association.

ISSUES

In accordance with the provisions of Section 209.4 of the New York Civil Service Law and by mutual agreement, the parties hereto submitted the following issues to the undersigned arbitration panel

- Wages
- Longevity
- Minimum Manning
- Overtime Pay
- EMT Stipend
- Personal Days
- Retirement Bonus

The Panel has carefully weighed the evidence and testimony submitted to it during the hearings and in post-hearing submissions in its determinations. The Panel has attempted to take a balanced

approach to the demands, one that recognizes the fiscal considerations of the City and the legitimate concerns of the members of the Union. The Panel has applied the criteria set forth in the law in assessing the merits of the parties' demands.

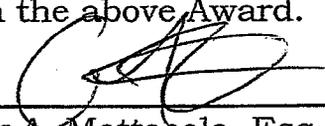
Term of Award

The parties, through their representatives, expressly authorized the Panel to exceed the statutory two (2) year award restriction and requested the Panel issue an Award for the period commencing January 1, 2011 and ending December 31, 2015 and also to consider all issues brought before it. The Award shall be for the period of January 1, 2011 through December 31, 2015.

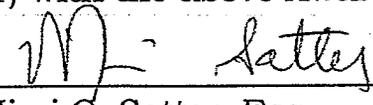
Term of Award

January 1, 2011 – December 31, 2015

I (concur) ~~(do not concur)~~ with the above Award.

Date: 5-16-14 
Gregory A. Mattacola, Esq.
Public Employer Panel Member

I (concur) ~~(do not concur)~~ with the above Award.

Date: May 13, 2014 
Mimi C. Satter, Esq.
Public Employee Organization Panel Member

DISCUSSION AND DETERMINATION OF THE ISSUES

Wages/Longevity Pay

The Union has proposed wage increases of 3.0% for each year of the award. The Union argues that salary increases of this size are reasonable given comparisons with similar employees in comparable municipalities in the region and New York State. A comparison with comparable small cities in the region and State, including Auburn, Utica, Troy, Watertown and Glens Falls, among others, clearly demonstrates that on average firefighters in this bargaining unit are paid similar salaries to those in these comparable communities and the proposed increase of 3.0% would maintain their current competitive position. The City's proposed increases of zero percent in the first two years would create a disparity with the comparable units in the region in the future as increases have averaged better than 3.0% in many of the comparable cities above as noted in the Union's exhibits.

The testimony of Kevin Decker, an expert in municipal finances as well as his analysis of the City of Rome financial statements demonstrate the City has the ability to pay the increases sought by

the Union. The City's budget and tax base clearly can support the increase sought by the Union.

The Union also seeks an increase in the current longevity payments. The Union's proposal to increase longevity by \$125 at each of the longevity steps is reasonable given the fact members of other bargaining units in the region and the Rome Police unit receive greater longevity pay. In Auburn firefighters receive \$1,500 in their 19th year.

The City argues that it has limited financial resources in the current economic conditions. The Union's proposals for pay increases including a 3.0% base wage increase as well as increases in longevity payments would place an unreasonable burden on its taxpayers.

The City contends that when the proper comparisons are made to the comparable municipalities the total compensation package of the members of the bargaining unit are seen to be highly competitive. Wages are not out of line and members of the Union enjoy good longevity payments as well. The City's proposed increase of 0% in the first two years of the agreement which is necessary as the City has no monies for retroactivity in salary and increases of 1.75% for 2013, 2%

for 2014 and 2% for 2015 are fair and reasonable given these facts and the fiscal problems confronting the City. These proposed increases are also comparable to those received by Rome Police bargaining unit in their recent settlement and would maintain the members' current competitive position in the region without placing an unreasonable burden on the City's taxpayers.

The City argues that the testimony of David Nolan, City Treasurer, and Frank Tallarino, Commissioner of Public Works, along with the supporting data submitted to the Panel clearly demonstrate the City is not in a financial position to grant the raises sought by the Union. The City's state aid has not increased and given the State's current problems it will not likely do so in the future. The City has a State mandated 2% tax cap on real property for 2013 and 1.67% for 2014. The City thus cannot afford to pay what the Union seeks without having to place an unreasonable burden on its taxpayers or exhausting its reserves. The State Property Tax Levy cap further limits future revenues for the City and when combined with mandated capital project costs and health insurance increases means the City is simply not in the position to pay the wage and longevity increases sought by the Union.

DISCUSSION

The Panel has carefully reviewed the extensive data submitted on both salary and longevity and believes there is support in the evidence for an increase in wages as the Rome Police and other comparable units have received wage increases in the region. An increase in longevities is also warranted by the evidence as current payments have lagged other similar bargaining units. The Panel is fully aware of the fiscal difficulties facing the City and recognizes that any wage increase must also not place an unfair burden on the City's already burdened taxpayers. However, it is in the best interest of both the City and its taxpayers that members of its firefighters department be fairly compensated for the difficult and often dangerous work they perform on behalf of the public. After looking at comparables in the region and taking into consideration the recent settlement with the Rome Police bargaining unit, the Panel believes an increase of 0% per year in base salary in each of the first two years and increase of 1.75% for 2013 and 2% for 2014 and 2015 would at least maintain the current wage levels and ensure they remain competitive with comparable bargaining units in the City. The Panel does believe the increases in longevity sought by the Union

are supported by the evidence and would therefore award the \$125 increase in each longevity step retroactive to January 2012. The Panel thus makes the following award on these issues.

AWARD

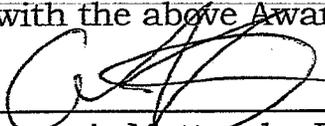
Salary

- 0% in 2011
- 0% in 2012
- 1.75% in 2013
- 2.00% in 2014
- 2.00% in 2015
- Full retroactivity

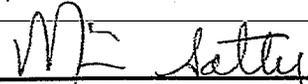
Longevities

- 5 years \$ 725
- 10 years \$ 825
- 15 years \$1,075
- 20 years \$1,200
- Retroactive to January 1, 2012

I (concur) (~~do not concur~~) with the above Award.

Date: 5-16-14 
Gregory A. Mattacola, Esq.
Public Employer Panel Member

I (concur) (~~do not concur~~) with the above Award.

Date: May 13, 2014 
Mimi C. Satter, Esq.
Public Employee Organization Panel Member

Minimum Manning
Article XVI.

The City has proposed changes in the current provisions for minimum manning in the Collective Bargaining Agreement. The City believes the changes it seeks are necessary to increase flexibility in staffing of shifts and help it reduce call-back costs, and are justified by comparison to other comparable municipalities. The City seeks to reduce the current minimum manning per shift from 17 to 16 and have the provision expire at the end of the agreement in 2015. The City believes the current provision was intended and was constructed as a sunset clause to expire in December of 2010. It is a provision that currently costs the City approximately \$250,000 a year in additional call-back costs to maintain 17 firefighters on a shift. The Rome Police have no such limitations in their Agreement with the City and it represents an improper restriction on the City's ability to solely determine appropriate staffing levels as noted by the courts. As such the City's proposal is reasonable and necessary given the costs.

The Union has proposed that the staffing level be maintained at the current level of 17 per shift as its position is that it provides necessary firefighters on a shift to ensure safety when working fires.

The Union also seeks to have the current provisions become a permanent part of the Agreement in Article XVI by removing the current language regarding any sunseting of the provision. It is clear from the testimony of Union witness Dennis Sweeney and even the Fire Chief, Ronald Bremment, that given the size of the area and type of buildings that the Rome Fire Department is responsible for 17 firefighters are necessary on a shift to ensure safety and the ability to respond to major fire events.

DISCUSSION

The Panel has weighed the testimony of the witnesses who testified on the question of manning levels as well as the costs and legal arguments concerning its current placement and structure in the Collective Bargaining Agreement and believes given the complexity of the issue any final determination on changes should be left to the parties' negotiations in the future. It was clear from the parties' presentation at the hearings that this issue is important to both the City and the Union and is a complex matter of considerable contention between them. Given that importance and the legal and contractual questions surrounding the provision on manning the

Panel would award no changes to the current provisions as sought by both parties leaving it to further negotiations.

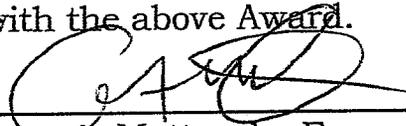
AWARD

Minimum Manning

No change in the existing provisions governing minimum manning in Article XVI in the Collective Bargaining Agreement.

I (concur) (~~do not concur~~) with the above Award.

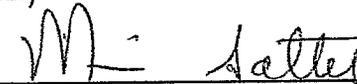
Date: 5-16-14



Gregory A. Mattacola, Esq.
Public Employer Panel Member

I (concur) (~~do not concur~~) with the above Award.

Date: May 13, 2014



Mimi C. Satter, Esq.
Public Employee Organization Panel Member

EMT Stipend/Retirement Bonus/Personal Leave Article XIX.

The Union has proposed increases in both EMT stipend provided for in Article XIX Section 6 of the Agreement and the retirement bonus in Article XIX Section 7. The Union has argued that its proposed increase to \$425 from \$325 for the EMT stipend would still leave it lower than that paid at other comparable municipalities such as Auburn (\$600), Glens Falls (\$500), and Utica

(up to \$1,000). The total cost to the City would be less than \$10,000 and would help maintain a competitive compensation package.

The proposed increase in the retirement bonus to \$7,000 at 20 years, \$4,000 at 21 years, \$3,000 at 22 years, \$2,000 at 23 years, and \$1,000 at 24 years would again compensate firefighters for long-term service to the City while encouraging them to retire thereby allowing the City some savings by way of a new hire. It would be a win for both parties. The Union also has proposed the creation of a personal leave day as none currently exists and it compels firefighters to utilize sick leave at times for personal business.

The City argues it has limited resources as noted in the earlier discussion over wages. While it recognizes the merits of some benefit increases to maintain a competitive compensation package they must be limited as they were with the Police bargaining unit given current fiscal conditions. It might be willing to grant some increase in benefits in these areas but cannot do so and still address the Union's proposed addition of a new personal leave day which would cost in excess of \$77,000.

DISCUSSION

The Panel has carefully considered the evidence and testimony on these three benefit issues and believes while there is support based on comparability and cost for improvements in the EMT stipend and retirement bonus that a personal leave day cannot be justified at this point in time given fiscal conditions of the City. The increases sought by the Union for the EMT stipend would directly reward younger firefighters for improving their skills and help to keep them competitive with other firefighters in comparable communities. The retirement bonus increases would reward long-term employees and still help the City by encouraging early retirement that would reduce costs. The Panel would therefore make the following Award on these issues.

AWARD

EMT Stipend

The EMT stipend shall be increased to \$425 in Article XIX of the Collective Bargaining Agreement retroactive to January 1, 2012 Retirement Bonus.

Retirement Bonus

The retirement bonus provided in Article XIX of the Collective Bargaining

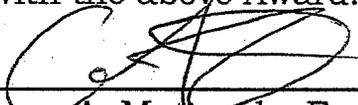
Agreement shall be increased to the following, effective January 1, 2014:

20 years	\$7,000
21 years	\$4,000
22 years	\$3,000
23 years	\$2,000
24 years	\$1,000

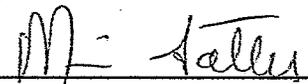
Personal Leave

The proposed addition of a personal leave provision is not awarded.

I (concur) (~~do not concur~~) with the above Award.

Date: 5-16-14 
Gregory A. Mattacola, Esq.
Public Employer Panel Member

I (concur) (~~do not concur~~) with the above Award.

Date: May 13, 2014 
Mimi C. Satter, Esq.
Public Employee Organization Panel Member

Overtime Pay
Article V.

The Union has proposed changing the current provisions in Article V governing the minimum time to be paid at overtime for a call-back from the current two hours to four (4) hours. The Union argues that the current two hours does not properly compensate firefighters who are called back for an emergency. Comparable cities

including Auburn, Utica, Glens Falls and Troy all have either three- or four-hour minimum. Rome Police also have a four hour minimum.

The City has argued that the minimum of two (2) hours is sufficient as most call-backs involve more hours than the two. The City also notes that the potential additional costs of increasing the minimum to four (4) hours could be in excess of \$28,000 which would be an additional burden on a limited budget without adding additional services.

DISCUSSION

The Panel has considered the testimony and evidence submitted on the issue of an increase in the minimum hours at overtime pay to be paid for a call-back and believes there are grounds for some increase from the current provision for two hours. The Panel believes that an increase to 3 hours would be reasonable given the comparables to maintain a competitive position with respect to other similar cities while not putting an undue fiscal burden on the City. The Panel would therefore award an increase from two (2) hours to three (3) hours as the minimum to be paid at the overtime

rate for a call-back under the provisions of Article V of the Collective Bargaining Agreement.

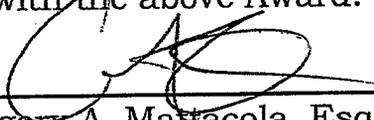
AWARD

Overtime Pay

A minimum of three (3) hours of pay at the overtime rate shall be given to an employee on a call-back under the provisions of Article V, effective January 1, 2014.

I (concur) (~~do not concur~~) with the above Award.

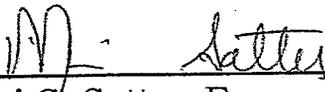
Date: 5-16-14



Gregory A. Mattacola, Esq.
Public Employer Panel Member

I (concur) (~~do not concur~~) with the above Award.

Date: May 13, 2014

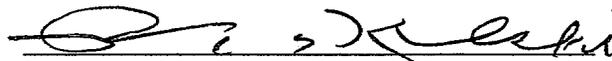


Mimi C. Satter, Esq.
Public Employee Organization Panel Member

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

Respectfully submitted,

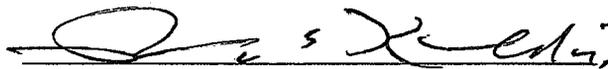
May 22, 2014
Date


Ronald E. Kowalski, Ph.D.
Public Panel Member and Chairman

State of New York)
) SS:
County of Onondaga)

I, Ronald E. Kowalski, Ph.D., do hereby affirm upon my oath as Arbitrator that I am the individual described herein and who executed this Instrument which is an Interest Arbitration Award.

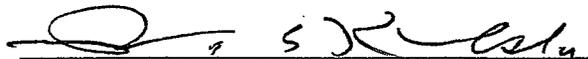
May 22, 2014
Date


Ronald E. Kowalski, Ph.D.
Public Panel Member and Chairman

State of New York)
) SS:
County of Onondaga)

I, Ronald E. Kowalski, Ph.D., do hereby affirm upon my oath as Arbitrator that I am the individual described herein and who executed this Instrument which is an Interest Arbitration Award.

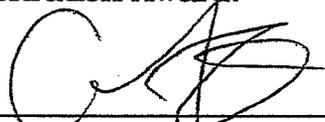
May 22, 2014
Date


Ronald E. Kowalski, Ph.D.
Public Panel Member and Chairman

State of New York)
) SS:
County of Oneida)

I, Gregory A. Mattacola, Esq., do hereby affirm upon my oath as Arbitrator that I am the individual described herein and who executed this Instrument which is an Interest Arbitration Award.

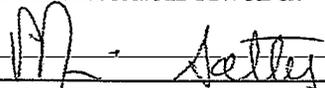
S-16-14
Date


Gregory A. Mattacola, Esq.
Public Employer Panel Member

State of New York)
) SS:
County of Onondaga)

I, Mimi C. Satter, Esq., do hereby affirm upon my oath as Arbitrator that I am the individual described herein and who executed this Instrument which is an Interest Arbitration Award.

May 13, 2014
Date


Mimi A. Satter, Esq.
Public Employee Organization Panel Member