

APR 2 1980  
CO-OPERATION

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In the Matter of the Arbitration :  
Between :  
CITY OF OGDENSBURG, NEW YORK :  
and :  
Local 1799, OGDENSBURG FIRE FIGHTERS :  
ASSOCIATION :  
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AWARD  
Case Nos. 1A-129;  
78-661

In accordance with the provisions of the Civil Service Law, as amended July 1, 1977, the New York State Public Employment Relations Board, on October 1, 1979, designated the following individuals to serve as a Public Arbitration Panel in these proceedings:

- S. Erno Moore, Employer Panel Member
- Dominick A. Timpano, Employee Organization Panel Member
- Irving R. Markowitz, Panel Member and Chairman

Pursuant thereto, the panel held hearings on December 3, 1979, in the City of Ogdensburg, State of New York, concerning the issues stated in the pleadings herein, at which time the representatives of the parties adduced written and oral testimony and presented oral and written statements in support of their respective positions. Patrick H. Collins, Esq., City Attorney, appeared for the City and Messrs. Kelly, IAFF Staff Representative, and Wells, Local President, for the Association. Following the hearing, representatives of each of the parties submitted post-hearing briefs to members of the panel.

THE ISSUES

The issues submitted by the parties in their pleadings are in the following areas:

1. Hours of Duty
2. Vacations and Holiday Selection
3. Health Insurance
4. Out of Title work

5. Personal leave
6. Vacancies
7. Grievance Procedures
8. Duration of Contract and general provisions
9. Salary
10. Clarification of Articles 4 and 15 of Contract

#### BACKGROUND

The City is located in the northern area of St. Lawrence County adjacent to the St. Lawrence River, in a somewhat rural area.

The Association represents the negotiating unit of some 32 members of the Fire Department, all of whom are firefighters. <sup>1</sup>

The proceedings herein concern the resolution of an impasse in connection with the negotiations for a collective agreement to succeed a two year agreement which expired on December 31, 1978. <sup>2</sup>

The basic provisions of the expired contract are comprehensive concerning terms and conditions of employment and include, among other things, a base pay for firefighters, plus various supplemental benefits of vacations, holidays, sick and personal leaves, medical and hospital insurance, retirement benefits, uniform allowance and the like.

#### STATUTORY REQUIREMENTS

Section 209.4(v) of the Civil Service Law requires the panel to consider, among other relevant factors, the following:

- a. "comparison of 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

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- 1) It appears that at some time prior to these proceedings, the officers of the Department were spun off the unit and formed their own negotiating unit.
  - 2) The expired contract provides that its terms shall remain in effect until a new contract is reached.

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."

#### ISSUES - DISCUSSION AND AWARD

We shall now address ourselves to the issues stated in the pleadings and evaluate the positions of the parties with respect thereto in accordance with the standards and criteria set forth in the statute.

##### 1. Hours of Duty

The present contract clause reads as follows:

#### ARTICLE 6 - Hours of Duty

"The basic work schedule for the department shall be so established that the average weekly hour of duty, other than hours during which such member may be summoned and kept on duty because of a conflagration or major emergency, shall be a (4) platoon system, with an average work week of (40) hours. It is understood that the tour of duty on the work schedules shall be divided into 10 and 14 hour periods (see Schedule A attached). The compensatory time (104 hours) to be scheduled in a like manner for all employees."

## POSITIONS OF THE PARTIES

The City has proposed a modification of the present article so as to provide that permanent changes in the existing 10 - 14 hour schedule may be modified upon 60 days notice to the Association. It submits that such addition will allow it to accommodate to changing conditions, if and when required, with ample notice to affected employees.

The Association has proposed that the phrase "by seniority on the assigned shift" be added to the last sentence of the article, to provide a fairer and more objective method of allotment of compensatory time.

### AWARD

The panel awards that the City's proposal be disallowed. A change in basic work week should be supported by a clear and pressing need therefor, which the City has not shown. Moreover, the present article allows flexibility in scheduling in the event of emergencies and the like.

The panel further awards that the Association's proposal be denied. The need for flexibility for proper deployment of fires should not be unduly restricted by the inclusion of the Association's proposed phrase.

## 2. Vacations and Holiday Selection

The present article reads as follows:

### ARTICLE 7 - Vacation

"Vacation shall be (21) consecutive days as mandated by State Law. Vacation and 42 hours holiday time shall be selected for 28 days to run continuously and to coincide with a normal 28 day work cycle. The remainder of holiday time shall be selected in accordance with Article 18.

"Vacation shall be chosen starting December of each year. All vacation and holiday leave for firemen and officers, except Fire Chief, will be posted in the station January 1. Vacation will be selected in accordance with seniority by assigned shift."

POSITIONS OF THE PARTIES

The Association has made the following proposals:

- a) Increase vacation period from 21 to 35 days;
- b) Employees be given the right to receive their vacation pay prior to going on vacation;
- c) The words "officers" and "Fire Chief" be deleted from the Article;
- d) There should be two employees on vacation at all times.

The City disagrees and further has proposed a modification of the vacation schedule to provide the following:

<u>Length of Service</u>	<u>Vacation Days</u>
0-11 months	0 days
12-59 months	14 days
60 months or more	21 days

AWARD

The panel awards the following:

1) There is to be no change in the present 21 day vacation schedule, except that those employees who have less than 12 months length of service, shall receive one day of vacation for each month of their completed service;

2) Vacation pay be given to employees prior to their vacation period provided they notify the City of such election at least one month prior to the start of their vacation periods;

3) The word "officers" and "Fire Chief" be deleted from the provisions of Article 7;

4) The following provision be added to the Article, to wit:

"Whenever feasible and in accordance with the discretion of the Fire Chief, vacations, holidays and compensatory time may be allowed to two firefighters for the same periods of time".

We believe that the modifications herein are fair and equitable and reflect the reasonable needs of the parties.

### 3. Health Insurance

The pertinent provision of the present contract is contained in Article 10, Section 2, which reads as follows:

#### ARTICLE 10 - Health Insurance

Section 2 - "The City will continue to pay 100% of the cost of the health insurance of the employee together with 100% of the cost of health insurance for any of his dependents included in his plan."

#### POSITIONS OF THE PARTIES

The City has proposed to modify the section so as to provide the following:

The City will pay 100% of the cost for health insurance for retired employees together with 35% of the cost for health insurance for any dependents of a retired employee.

The City, in case of new hires after 1-1-79, will pay 50% of the cost for health insurance and 35% of the cost of health insurance for any dependents upon their retirement. New employees after 1-1-79 will be responsible for paying their own medicare premiums.

Provisional employees will be responsible to pay their own health care premiums until such time as they are appointed on a permanent basis.

It submits that such changes have already been accomplished in its contracts with negotiating units representing other City employees.

The Association disagrees and submits that no changes be made in the present article.

#### AWARD

The panel awards that the present contract provision be modified to the following extent only:

"The City will pay 100% of the cost for health insurance for retired employees together with 35% of the cost for health insurance for any dependents of a retired employee".

We believe that, except for the above modification, the present provisions are fair and equitable and are similar to a substantial number of firefighters' contracts throughout the State.

4. Out of Title Work

The present contractual provision is as follows:

ARTICLE 12 - Out-of-Title Work

"When a firefighter or fire officer is assigned by competent authority to work out-of-title at a higher rank than his regular rank for a period of time exceeding one (1) pay period, he shall be compensated for working in that position for the time worked on a per diem basis which shall reflect the difference between his regular salary which he would receive if promoted regularly to the higher title."

POSITIONS OF THE PARTIES

The Association has proposed an addition to the article so as to provide that no firefighter be required to perform clerical work dealing with fire reports and the like. It believes that such duties are and should be confined to officers.

The City disagrees and proposes the deletion of the entire article as an unwarranted restriction on management's rights.

AWARD

The panel awards that the provisions of Article 12 remain intact. In such respect, we believe that the arguments of either side for a modification are not persuasive. The present provisions are common in principle with other labor contracts. Moreover, the performance of routine clerical duties by firefighters are incidental to their regular duties and in such regard, should not be deemed to be out of title work.

5. Personal Leave

The pertinent provision of the present contract reads as follows:

ARTICLE 16 - Personal Leave

a) "All employees shall be entitled to 72 hours personal leave time."

POSITIONS OF THE PARTIES

The City has proposed to reduce the number of personal leave hours from the present 72 hours. It argues that the amount of personal leave time constitutes an inordinate payment for time not worked and substantially erodes the productivity of the unit.

The Association disagrees and argues that this benefit has been previously bargained for at the expense of salaries and other benefits.

AWARD

The panel awards that the City's proposal be adopted and that the present number of personal hours be reduced to 48 hours but that, in all other respects, the article remain intact. The City's arguments persuade us that the amount of 48 hours of personal time is reasonable and adequate under the circumstances herein and are comparable with other similar units.

6. Vacancies

The present provision reads as follows:

ARTICLE 21 - Vacancies

"When a vacancy occurs in any competitive class of the Fire Department, such vacancy will be filled as soon as practical from a Civil Service eligibility list. The Civil Service Commission shall be requested to maintain an active list of candidates for the position of firefighter at all times. In the event of an anticipated vacancy of an officer position, the City, upon notification by Local 1799, shall request the Civil Service Commission to establish an eligibility list if none exists."

POSITIONS OF THE PARTIES

The City proposes to delete the article on the grounds that it mandates the filling of any vacancy and thus may impose on it unneeded or unwanted manpower.

The Association insists on its retention.

AWARD

The panel awards that the present article remain intact. We do not find that the City's fears are justified by the present language of the provision.

7. Grievance Procedure

The pertinent provision of the Grievance Procedure - Article 23, reads as follows:

d-6. "Any expense incidental to arbitration shall be borne by the City."

POSITIONS OF THE PARTIES

The City has proposed to delete the cited sentence and substitute in its stead the following:

"The arbitrator's fees and expenses shall be shared equally by the parties and each party shall pay its own fees and expenses incidental to the processing of the arbitration."

It argues that, as a result of an arbitration award interpreting the present provision, it has been unjustly and unfairly required to not only pay the full arbitrator's fees and expenses but also those incurred by the Association for its own counsel fees and the like.

The Association's position is that no change be made in the contested provision.

AWARD

The panel awards that each side pay its own fees and expenses incurred in the

processing of an arbitration and that the City pay 75% and the Association 25% of the arbitrator's fees and expenses.

We find that the assumption by the City of the Association's expenses in processing or prosecuting an arbitration is totally unprecedented and undoubtedly the result of the ambiguous language of the cited contract provision. We doubt its legality but, in any event, it is unfair and improper and may proliferate the number of grievances in the unit. We do find that other contracts sometimes (though rarely) contain provisions that one side or the other pay the full amount of the arbitrator's fees and expenses. Since the parties have in the past agreed on the City's bearing at least the arbitrator's cost, it would seem fair and appropriate that for the term of the proposed contract, it bear 75% of that cost.

#### 8. Duration of Contract and General Provisions

Both sides have agreed on a two year contract commencing January 1, 1979 and the panel so awards. However, there is an issue concerning the last sentence of Article 26(a) - General Provisions - which, in pertinent part, reads as follows:

"The provisions of this contract shall remain in effect until a new agreement is reached."

#### POSITIONS OF THE PARTIES

The City proposes to delete this sentence and substitute, in its place, the following:

"The provisions of this contract shall remain in effect until a new agreement is approved, except that salary increments due after the expiration of the present contract will not be granted until a subsequent agreement is reached."

The Association objects.

## AWARD

The panel awards that the City's proposal to modify the present language not be allowed and that the language of the cited provision remain intact.

While the problem of continuing increments after the expiration of a contract has been a source of friction between parties, both at the bargaining table and in the courts, we do not find any compelling reason to change the present language.

### 9. Clarification of Articles 4 and 15 of Contract

Article 4, in pertinent part, reads as follows:

"Such employees' seniority shall date from the date of last permanent appointment to the department."

In some respects it may be paired with Article 5 which deals with seniority lists. Since some confusion has arisen because of the spin-off of fire officers from the instant unit, the parties have requested clarification. For such purpose, the panel awards that the following language be appropriately inserted in the affected articles.

"The seniority of all firefighters in the unit will commence from the date of their respective hire as firefighters."

and

"The Department shall establish a seniority list of all members of the unit and post such list annually on January 1 of each year and said list shall remain appropriately posted for thirty continuous days thereafter."

### Article 15

We do not perceive any problem in Article 15. A tour of duty is either 10 hours or 14 hours, as the case may be.

10. Salaries

Because of its special importance, the panel has left this issue as the last to be determined.

The present salary schedule is as follows:

<u>Length of Service</u>	<u>Salary</u>
Less than one year	\$ 9,677
One to two years	10,140
Two to three years	10,603
Three to four years	11,066
Four to five years	11,529
Over five years	11,992

Additionally, there are longevity steps as follows:

<u>Step</u>	<u>Years of Service</u>	<u>Amount</u>
L-1	After 10 years	\$ 463
L-2	After 15 years	926
L-3	After 20 years	1,389

POSITIONS OF THE PARTIES

The Association has proposed for each of the two calendar years (1979-80 and 1980-81) of the contract, increases of 18% (for each year) in addition to step increments and longevity pay, plus interest on any retroactive pay. It supports its proposal essentially on the abnormal state of the nation's economy and the spiralling increases in costs of living, which it argues, will do no more than maintain the purchasing power that firefighters have had during the period of the 1977-78 contract.

The City has proposed an increase of some 6% plus increment. In support of its proposal, it has shown that (1) such increase has been provided generally to the other 5 negotiating units that deal with the City (2) such increase places the firefighters at a level generally equal to or better than firefighters in communities of like size and character throughout the state; (3) the increased salaries will approximate those of skilled employees in the community

on the basis of actual hours worked; (4) the limited financial ability of the City to fund additional increases because of restricted growth in revenue, reduction of federal and state revenues and (5) poor economic forecasts for City growth and development and high unemployment rates.

#### AWARD

On the basis of submitted economic data and statutory criteria, the panel awards an across the board increase on the present salary levels of each step, of 7 1/2% for the calendar year 1979-80, retroactive to January 1, 1979, and 8 1/2% for the calendar year 1980-81, retroactive to January 1, 1980, and that longevity payments be made as of January 1, 1980 to all those entitled to such payments as of that date.

In reaching this award, we have considered and carefully compared the wages, hours and conditions of employment of those involved herein with other employees, both in the private and public sectors in comparable communities, requiring similar skills under similar conditions. We have found that the employees herein receive salaries and benefits generally provided to employees of similar skills in similar communities and that there are no unique differences among them in such respect. While the element of hazard is probably more pronounced among firefighters than other trades or professions, this is balanced by the other evaluative elements of physical, mental and educational qualifications of job training and skills. We have further found that while the City is not suffering from an inability to pay as that term is generally defined in labor relations, nonetheless, just as most other cities in the State, its financial condition is poor and its prospects for economic growth and development dim. We have concluded in such connection, that the City can afford a modest increase in salaries, though not one that can match increases in cost of living. We have further noted that increases to unit members herein for the years

1977-78 and 1978-79 have approximated 5 1/2% including increments, a somewhat modest figure when compared to public and private industry generally. We have also considered relevant factors of salary determination such as current patterns and trends in salary increases for public employees, cost of living phenomena and presidential guidelines. Based on all of these statutory criteria, with special weight given to the interests of the public and comparative salary and benefit data, we have concluded that our award in this respect is fair and equitable under the facts and circumstances herein.

GENERAL OBSERVATIONS

There have been several understandings mutually achieved by the parties with respect to issues between them. Those understandings are to be incorporated into the new contract. Additionally, all provisions awarded herein are, when practical, to be retroactive to January 1, 1979.

The parties shall forthwith proceed to execute their new contract will all deliberate speed.

Dated: 3/26/80

s/ Erno Moore  
 S. Erno Moore  
 Employer Panel Member

s/ Dominick A. Timpano  
 Dominick A. Timpano  
 Employee Organization Panel Member

s/ Irving R. Markowitz  
 Irving R. Markowitz  
 Panel Member and Chairman

STATE OF NEW YORK        )  
 COUNTY OF                ) SS  
 CITY OF OGDENSBURG    )

On this 26<sup>th</sup> day of March, 1980, before me, the subscriber, personally appeared S. Erno Moore, to me known and known to me to be the same person described in and who executed the foregoing Instrument and he duly acknowledged to me that he executed the same.

s/ Mary K. Frel. et al  
 St. Lawrence Co  
 3/26/80

STATE OF NEW YORK )  
COUNTY OF ONEIDA ) ss  
CITY OF UTICA )

On this 16<sup>th</sup> day of March, 1980, before me, the subscriber, personally appeared Dominick A. Timpano, to me known and known to me to be the same person described in and who executed the foregoing Instrument and he duly acknowledged to me that he executed the same.

*s/ Colleen Ann Wagner*  
*Albany Co*  
*3/3/80*

STATE OF NEW YORK )  
COUNTY OF ONONDAGA ) ss  
CITY OF SYRACUSE )

On this 3<sup>rd</sup> day of April, 1980, before me, the subscriber, personally appeared Irving R. Markowitz, to me known and known to me to be the same person described in and who executed the foregoing Instrument and he duly acknowledged to me that he executed the same.

*Carol O. Benedict*  
CAROL O. BENEDICT  
Notary Public in the State of N. Y.  
Appointed in Oneida County  
My commission expires Mar. 30, 1982 *SD*

