

NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD: ADMINISTRATOR

In the Matter of the Interest :
Arbitration between :

THE CITY OF WATERVLIET :

PERB Case No. IA90-012
M89-468

and :

THE WATERVLIET UNIFORMED FIREFIGHTERS
ASSOCIATION, LOCAL 590, IAFF, AFL-CIO :

NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD
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AUG 12 1991

Panel Members: Mona Miller, Chair and Public Panel Member
Dominick Timpano, Employee Organization, Public Panel Member
Nicholas Ostapkovitch, Employer, Public Panel Member

Appearances:

For the City:

W. Dennis Duggan, Counsel
Paul S. Murphy, General Manager
Robert A. Fahr, Director of Finance
George W. O'Connor, Consultant

For the Union:

Jane K. Finin, Counsel
John Decker, President, UFFA
Thomas M. McCormack, Executive Board Member
Donald Panica, Secretary/Treasurer, UFFA
Ed Fennell, Witness

PRELIMINARY STATEMENT:

This arbitration award is the result of the collective bargaining impasse between the City of Watervliet, referred to as the "City" in the award, and the Uniformed Firefighters Association, referred to as the "Union" in this award.

BACKGROUND:

The City of Watervliet is located in the Capital District of New York, in Albany County, covers 1.3 square miles and has a population of 11,300. It is one of the smallest cities in the State. The Union is bargaining agent for 24 active firefighters. Other bargaining units in the City include the PBA, with 24 police officers in the unit.

In reaching its award, the Panel relied upon the data and arguments offered by the parties in support of their positions. The Panel determined the weight and relevancy to be assigned to the evidence, bearing in mind that the negotiations had been conducted by persons not present at the arbitration hearing.

The dispute concerns the terms of the agreement to replace the collective bargaining agreement and addenda which expired on December 31, 1989. After negotiations and mediation failed to resolve the impasse, the Public Employment Relations Board appointed the undersigned to serve as a Public Arbitration Panel to determine the terms of a successor agreement, pursuant to Section 209.4 of the Civil Service Law.

A hearing in the matter was held on April 4 and 5, 1991 at which time the parties were afforded full opportunity to set forth their positions, offer supporting evidence, and examine and cross-examine witnesses. Post hearing briefs were post-marked

and exchanged on May 2, 1991 at which time the record was closed. The Panel met in Executive Session on May 15, 1991 and then conferred by phone.

The award is based upon consideration of the facts, testimony and evidence, exhibits and background documents submitted by the parties. The award is in accord with the statutory criteria as they apply to this dispute:

Comparisons of the wages, hours and conditions of employment of the Watervliet Firefighters, with other public safety employees in the City of Watervliet and firefighters in similar municipalities as well as the terms and conditions of employment which have been in existence over the years are among the statutory criteria. Job qualifications, training, skills and the hazards of the firefighter's job, as compared to that of other types of employment, are issues that must also be taken into consideration by the panel. The interests and welfare of the public must also be considered, as well as ability to pay.

The Panel considered each of the unresolved issues submitted for its consideration and has reached a unanimous (?) decision on each of them. Pursuant to the statutory authority, the duration of this Award shall be for two years from the expiration date of December 31, 1989, through December 31, 1991. All terms and conditions not addressed by this Award remain as presently written in the Collective Bargaining Agreement and addenda.

ITEMS IN DISPUTE:

Union Proposals

1. Increase salaries by six percent for 1990 and six percent for 1991.
2. Increase rank differentials by one percent
3. Add a premium of 50 cents per hour to wages when only four firefighters are on duty.
4. Increase longevity pay by \$200.00 per step.
5. Increase holiday pay to 12 hours per holiday.
6. Add dental insurance to medical coverage.
7. Adopt the 20 year retirement plan.
8. Increase life insurance contributions by the City, by a total of \$500.00 per year (Article II, Section 16(A), p. 7; Union 4-A).
9. Pay Battalion Chief's rate and Captain's rate to the two on-duty members who hold the first in command and second in command positions for all such time as said positions are held.
10. Return to the 24 hour work schedule.
11. Increase EMT pay by \$200.00 per year.

City Proposals

Reduction of release time for negotiations .

Vacation week defined as 40 hours

The City's response to the petition for Interest Arbitration states that the City made oral proposals to the Union

during negotiations. No proposals and no evidence on these items are in the record; hence, they have not been considered by the Panel.

The Award which follows considers the issues in order of their consideration by the Panel.

Other Union Proposals

1. SALARIES. The Union proposes a 6% increase in salaries for 1990 and 6% increase for 1991. The Union also seeks a premium of 50 cents per hour as hazardous duty pay and a 2% increase for administrative duties. The City was offering 4.5% for each year, but the City's arguments and post-hearing brief indicate that 5% has been used in calculating the costs of increases.

Contentions of the Union:

The Union compares Watervliet's firefighter salaries to those of its own police department and to the communities it chose for comparability. It relies upon the "breadbasket" theory of comparability, selecting communities within geographic proximity but excluding those with volunteer fire departments (UX 7, pp. 3, 13, 14). The Union argues that even 6% is inadequate in view of cost of living increases and in view of work load increases and deteriorating working conditions of the fire-fighters.

The City has the ability to pay, according to the Union, but is simply expressing an unwillingness to agree to the

increase. A sufficient fund balance is available for reasonable salary increases.

Contentions of the City:

The City compares Watervliet to cities both within geographic proximity and to upstate cities with population sizes plus or minus 25% of Watervliet's population. Where the Union included Albany, a much larger City, and excluded Amsterdam, a closer city than some it chose, and included Scotia, a Village, the City claims its comparisons are valid in terms of the size, statutory organization, and the broadness of its sample. The City asserts its comparisons are based on a fair consideration of the statutory criteria. The ability of the City to pay is governed by its ability to generate sufficient revenue. The City believes that as a "modest city of modest means" (City Brief, p. 9), by comparison to similar cities, it is spending more than its fair share on its fire fighting department.

Award:

After consideration of the evidence and in accordance with the statutory criteria, the Panel has determined:

Effective January 1, 1990, the base annual salaries of bargaining unit members shall be increased by 5.5% of the base rate of the prior year.

Effective January 1, 1991, the base annual salaries shall be increased by 5.5% of the base rate of the prior year.

2. TWENTY YEAR RETIREMENT

Contentions of the Union:

The Union proposes adoption of Section 384.d of the Police and Fire Retirement System. The financial impact of adoption of this plan has decreased dramatically (UX 30); currently it is cheaper than the 25 year plan for Tier I employees and only 2% more than the 25 year plan for Tier II employees (UX 29). Adoption of the 20 year plan would save the City money as senior members retire and are replaced by new employees at substantial savings. Five of the Union's eight comparables include 20 year retirement (UX 7, p. 6) and the Watervliet Police have the plan.

Contentions of the City:

The City argues that "only time will tell whether it is prudent, from both a financial and personnel standpoint, to have firefighters... able to retire when they are in their early forties" (City Brief, p. 14). About one-third of the City's comparables do not have the plan. The City also points out that the cost for Tier II employees plus the additional cost of continued health care insurance for retirees who would retire after 20 years rather than 25 would have to be weighed against potential savings. Nor should the unknown future costs of funding the retirement system be ignored. The current state of overfunded pension plans may not continue.

Award:

The Panel awards the 20 year retirement plan to take effect as soon as application and payment for the plan are approved.

The Panel notes that the potential savings, given the number of firefighters eligible this year or next for 20 year retirement, outweighs the relatively modest additional costs of the plan and also agrees that the inclusion of this optional plan meets statutory criteria on comparability and the special demands of the firefighters' occupation.

3. EMT PAY

Contentions of the Union:

The Union seeks a \$200 increase in each of two years. The firefighters who perform service at the "First Responder" level are operating at the EMT level of proficiency and should be compensated accordingly. Firefighter EMT's in the surrounding areas are paid more than those in Watervliet. When the EMT pay is added to their higher salaries, the total compensation for those firefighters exceed that in Watervliet, even projecting a 6% salary increase and a total of \$400 for EMT's (UX 7, pp. 16, 17).

Contentions of the City:

The City claims the service provided is "First Responder" which does not justify comparison to EMT service. Comparability is difficult to measure, as rates paid for EMT's in

comparable communities chosen by the Union range from zero, to 600 in Albany. The City regards payment for tuition as more valuable than an actual increase in the stipend.

Award:

The Panel views EMT type service as important to maintain at a fair and reasonable level of compensation. Recertification for EMT's is required every three years. Upon each proof of recertification, \$200 will be added to EMT compensation for that individual.

4. RANK DIFFERENTIAL

Contentions of the Union:

The Union proposes an additional 1% per year for rank differential. Almost all of the comparable communities indicate higher salaries for Lieutenant and Captain ranks in 1990, even with a 6% salary increase and a 1% rank differential (UX 7, p. 15). Essentially, the Union seeks to correct the inequity caused by staffing three platoons with a Captain and Lieutenant as first and second in command while staffing one platoon with a Battalion Chief and a Captain. The Union argues that Officers who are first and second in command on a shift perform the same duties regardless of their titles as Battalion Chief and Captain or as Captain and Lieutenant.

Contentions of the City:

The City has determined there is no need for a Battalion Chief and is phasing out that position. As the

Battalion Chiefs have retired, the City has replaced them with Captains. The City sees no reason to increase the differential paid to Captain and Lieutenants.

Award:

The Panel considered the evidence on the duties and responsibilities of those in command on a shift. The Panel recognizes the City's right to determine staffing needs on shifts, but it also regards the demand for pay equity as justifiable among those in charge of a shift who perform the same duties. Accordingly, a 1% differential is to be paid to Captains and Lieutenants who are first and second in command on a shift.

All Other Items

All other items submitted to the Panel for its consideration are denied. The Panel reviewed the arguments and evidence on each of the items, as listed in page 3 of this Award, and has determined there is insufficient rationale for any other changes in the Collective Bargaining Agreement.

AFFIRMATION

This Award constitutes the entire Award of the Panel concerning all issues properly before it. The undersigned Mona Miller and Dominick Timpano are in agreement and concur with each and every item in this Award. The undersigned, Nicholas Ostapkovitch, concurs with each and every item in the Award, except for those items to which he dissents, as set forth below his signature.

Dated 8/8/91

Mona Miller
Mona Miller
Public Panel Member

Dated 7/31/91

Dominick A. Timpano
Dominick Timpano
Employee Organization
Panel Member

Dated 7/29/91

Nicholas Ostapkovitch
Nicholas Ostapkovitch
Employer Organization
Panel Member

I, Nicholas Ostapkovitch, dissent as follows:

I dissent with the award of the Twenty year retirement
also

I dissent with the award of the 1% increment for officers.

DISSENT OPINION OF PANEL MEMBER NICHOLAS J. OSTAPKOVICH

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BEING A MEMBER OF THE ARBITRATION PANEL, WHOSE DUTY IS TO CONCILIATION
ARRIVE AT A JUST AND REASONABLE DETERMINATION THAT IS IN THE BEST
INTEREST AND WELFARE OF THE RESIDENTS OF WATERVLIET AND THE
MEMBERS OF THE U.F.F.A., I FOUND THAT THIS OBJECTIVE IS
IMPOSSIBLE TO ACHIEVE BECAUSE OF THE AMBIGUITY AND CONFLICT THAT
LIES WITHIN AND BETWEEN THE TAYLOR LAW AND THE BOARD OF APPEALS
DECISION IN THE CITY OF BUFFALO VERSUS RINALDO CASE.

THE TAYLOR LAW REQUIRES THAT SEVERAL FACTORS BE CONSIDERED
IN EVALUATING THE RELATIVE MERIT OF A DEMAND. INCLUDED AMONG
THOSE FACTORS ARE THE :

- A. COMPARISON OF WAGES, HOURS OF SIMILAR SKILLED EMPLOYEES.
- B. THE INTERESTS AND WELFARE OF THE PUBLIC AND THE
FINANCIAL ABILITY OF THE PUBLIC EMPLOYER TO PAY.
- C. COMPARISON OF PECULIARITIES.
- D. TERMS OF PAST COLLECTIVE AGREEMENTS.

THE TAYLOR LAW SPECIFIES THAT THE PANEL SHALL TAKE INTO
CONSIDERATION THESE ELEMENTS. HOWEVER, IT DOES NOT ELABORATE AS
TO THE SIGNIFICANCE OF EACH. SINCE THE RULES WHICH GOVERN THE
PROCESS ARE NOT CLEAR, INCONSISTENCY MUST EXIST BETWEEN EACH AND
EVERY PANEL WHICH ATTEMPTS TO DELIBERATE UNDER THE TAYLOR LAW.
THIS LACK OF CLARITY RESULTS IN A PANEL ATTEMPTING TO RESOLVE
THIS ISSUE FIRST, AND BECAUSE OF THE UNBIASED NATURE OF EVERY
MEMBER OF EVERY PANEL THE FACTORS ON WHICH A CASE IS DECIDED WILL
CONSISTENTLY VARY. THIS IN MY OPINION IS NOT THE INTENT OR
SPIRIT UNDER WHICH THE LAW WAS WRITTEN.

THE COURT OF APPEALS, IN THE RINALDO DECISION, MUDDIED THE ALREADY CLOUDY PICTURE. THE DECISION, AS ELABORATED IN THE UNION'S BRIEF, ESSENTIALLY SAYS THAT THE INABILITY TO PAY IS NOT A PRINCIPAL FACTOR IN DETERMINING A SETTLEMENT. ONE COULD BE ON/OR AT THE EDGE OF BANKRUPTCY AND THE INABILITY TO PAY ISSUE IN AND OF ITSELF WOULD NOT CONSTITUTE SUFFICIENT REASON TO LEAD TO A DETERMINATION. BASED UPON THIS DECISION, ACCORDING TO THE UNION'S BRIEF, DETERMINATIONS ARE TO BE "BASED UPON COMPARABILITY AND OTHER FACTORS RELATING TO JOB PERFORMANCE."

THE TAYLOR LAW, AS PREVIOUSLY NOTED, STATES THAT "THE FINANCIAL ABILITY OF THE PUBLIC EMPLOYER TO PAY" IS A FACTOR IN MAKING A DETERMINATION. ON ONE HAND WE NOW HAVE, THE TAYLOR LAW THAT SAYS THAT THE ABILITY TO PAY IS A FACTOR TO BE CONSIDERED. HOWEVER THE LEVEL OF CONSIDERATION TO BE GIVEN IS NOT CLEAR. ON THE OTHER HAND, THE RINALDO CASE DECISION IMPLIES THAT THE INABILITY TO PAY HAS LITTLE, IF ANY SIGNIFICANCE, IN THE DECISION PROCESS. DUE TO THIS CONFLICT, THE PROPER WEIGHT ONE SHOULD CONSISTENTLY GIVE THE ABILITY TO PAY, OR ANY OTHER COMPONENT OF THE LAW IS UNCLEAR.

WE, THEN, HAVE THIS CASE AT HAND, THE MAJORITY OF THE PANEL AGREED THAT AN AWARD BE MADE, WHICH INCLUDED:

- A. A WAGE INCREASE OF 5.5% IN 1990 & 1991
- B. 20 YEAR RETIREMENT
- C. \$200.00 FOR RECERTIFICATIONS OF E.M.T.'S
- D. 1% RANK DIFFERENTIAL FOR CAPTAINS AND LIEUTENANTS.

THE COST OF THIS AWARD BASED UPON UNION EXHIBITS (EXHIBITS 24-25-29) SHALL EXCEED \$100,000.00. THIS AMOUNT HOWEVER IS UNDERSTATED, FOR IT DOES NOT INCLUDE FICA, TRAINING COSTS, UNIFORM COSTS OF NEW HIRES, OVERTIME COSTS INCURRED DURING TRANSITION, AND ADDED HEALTH INSURANCE COSTS CREATED BECAUSE OF ADDITIONAL ACTIVE AND RETIRED PERSONNEL COVERAGE. TO THIS PANEL MEMBER THIS AWARD IS EXCESSIVE AND UNWARRANTED IN LIGHT OF THE ECONOMIC AND OTHER FACTORS CURRENTLY IMPACTING THE CITY.

BROUGHT INTO EVIDENCE, THROUGH TESTIMONY AND SUBMITTALS, WAS THE FACT THAT THE CITY'S 1991 BUDGET CONTAINED A \$193,000.00 CONTINGENCY LINE ITEM. TESTIMONY OF ROBERT FAHR, DIRECTOR OF FINANCE, PROVIDED INFORMATION THAT THESE FUNDS WERE ALLOCATED FOR POLICE AND FIRE CONTRACT SETTLEMENTS AS WELL AS THE FUNDING SOURCE FOR RETIREMENT PAYOUTS FOR UNUSED SICK LEAVE FOR THE RETIRED GENERAL MANAGER, TWO POLICE OFFICERS AND OTHER MISCELLANEOUS EXPENDITURES. THE UNION EXPERT, EDWARD FENNELL, ACCORDING TO HIS TESTIMONY AND THROUGH HIS AND THE UNIONS SUBMITTALS, DID NOT REVEAL ANY OTHER REVENUES WHICH COULD BE AVAILABLE FOR SALARY AND BENEFIT ADJUSTMENTS. THEREFORE, THE ONLY FUNDS AVAILABLE OVERALL FOR THE AWARD WAS A PORTION OF THE CONTINGENCY FUND. THE CITY ALSO INTRODUCED AT THE HEARING, SUPPORTING DOCUMENTATION REGARDING THE PROPOSED DECREASES IN STATE AID. THE STATE BUDGET WOULD DRASTICALLY REDUCE THE CITY'S STATE AID. THE LOSS OF REVENUE WOULD BE \$430,000.00 FROM THE PREVIOUS YEARS LEVEL. THE RESULT IS A 7.8% LOSS OF TOTAL

REVENUES FOR 1991. WE NOW KNOW THAT THIS PROPOSED REDUCTION IS IN FACT A REALITY. A 27% TAX INCREASE WOULD BE REQUIRED TO COMPENSATE FOR THIS LOSS. HOWEVER, SINCE THE CITY'S BUDGET WAS ADOPTED JANUARY 1, 1991. THERE ARE NO PRACTICAL AVENUES OPEN OF THE CITY TO OFFSET THIS REVENUE LOSS, OTHER THAN TO DRASTICALLY REDUCE EXPENDITURES. AN IMPRACTICAL APPROACH WOULD BE TO BORROW TO OFFSET THE LOST REVENUES IN 1991. THIS ALTERNATIVE IS CLEARLY NOT IN THE BEST INTEREST AND WELFARE OF ANY COMMUNITY, (E.G. NEW YORK CITY). IF THIS PATH WAS FOLLOWED THE 1992 BUDGET WOULD HAVE A TAX INCREASE OF 54% JUST TO COVER THE COST OF THE REDUCED AID IN 1991 AND 1992. ROUTINE INCREASES IN OTHER BUDGET LINE ITEMS WOULD SWELL THIS INTOLERABLE INCREASE LARGER. IN A BUDGET, WHERE OVER TWO THIRDS OF THE BUDGET IS ALLOCATED FOR EMPLOYEE COSTS, THE AVAILABLE OPTION IS UNPLEASANT.

INTRODUCED AT THE HEARING WERE THESE FACTS; THE CITY OF WATERVLIET HAS A POPULATION OF 11,300, 1.3 SQUARE MILES OF TOTAL LAND AREA, HAS 99% OF ALL AVAILABLE LAND DEVELOPED, HAVING 76% OF ITS TAX BASE EXEMPT, HAS A MEDIAN FAMILY INCOME LESS THAN THAT OF THE AVERAGE CAPITAL DISTRICT COMMUNITY, IS ONE OF THE HIGHEST MEDIAN AGED COMMUNITIES IN THE STATE. WATERVLIET IS IN FACT NOT A TYPICAL CITY, LET ALONE AN AVERAGE COMMUNITY.

ON ONE HAND, WE HAVE AN AWARD WHICH WILL COST WELL OVER \$100,000.00. ON THE OTHER HAND, WE HAVE A DEFICIT BUDGET CREATED BY THE REDUCTION IN STATE AID. WITH THESE KNOWN FACTS WHAT IS A PROPER AWARD?

(5)

BOTH SIDES PRESENTED EVIDENCE WHICH SUPPORTED THEIR RESPECTIVE POSITIONS. THE UNION'S ARGUMENT WAS ESSENTIALLY SOME ONE ELSE HAS IT AND WE, THEREFORE, DESERVE IT. THE CITY'S SUBMITTALS SHOWED A UNION CURRENTLY RECEIVING BENEFITS TYPICALLY GREATER THAN THOSE OF SIMILAR SIZED COMMUNITIES THROUGHOUT THE STATE. THE CITY'S EVIDENCE, ALSO, SHOWED THAT THE FIREFIGHTERS COMPARE FAVORABLY TO THOSE IN OTHER LOCAL COMMUNITIES OVERALL. HOWEVER, NO EVIDENCE WAS AS PERSUASIVE AND AS CLEARLY STRAIGHT FORWARD AS THE CURRENT FINANCIAL OUTLOOK FOR THE CITY. DUE TO THE LOSS OF STATE AID, AND THE MAKEUP OF THE CITY, THE ABILITY FOR WATERVLIET TO PAY FOR THIS AWARD IS QUESTIONABLE.

IN MY OPINION, BASED UPON THE EVIDENCE SUBMITTED AND TESTIMONY PRESENTED, A FAIR AND JUST SETTLEMENT WOULD BE THE AWARD OF A 5.5% PAY INCREASE AND THE EMT INCREASE. NO OTHER CHANGES WERE WARRANTED.

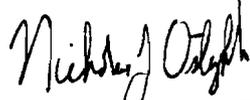
HOWEVER, THE LACK OF CLARITY IN THE TAYLOR LAW AND THE CONFLICT BETWEEN THE TAYLOR LAW AND THE RINALDO DECISION HIDE THE PATH FOR A JUST AND REASONABLE DECISION. THE DEMOGRAPHIC FACTORS AND ABILITY TO PAY QUESTION SHOULD HAVE WEIGH HEAVILY IN FAVOR OF CITY'S ARGUMENTS. IF THE TAYLOR LAW HAD PROVIDED THE PANEL WITH GUIDELINES WHICH WERE SPECIFIC AND CLEAR, THE DECISION IN THIS ARBITRATION WOULD HAVE BEEN QUITE DIFFERENT, IN MY OPINION. SINCE THE TAYLOR LAW DOES NOT EXPLICITLY ELABORATE AS TO THE WEIGHT ONE SHOULD GIVE THE VARIOUS FACTORS, THIS PANEL NOR ANY OTHER CAN EVER HAVE 100% UNANIMOUS AGREEMENT ON THE RATIONAL ON WHICH TO BASE AN AWARD. THEREFORE, THE PROCESS CONTAINS A MORTAL FLAW.

(6)

THE AWARD WHICH A MAJORITY OF THE PANEL AGREED TO IN MY OPINION IS NOT IN THE BEST INTEREST AND WELFARE OF THE RESIDENTS OF WATERVLIET AND THE U.F.F.A.. IT WILL PLACE A SEVERE FINANCIAL BURDEN UPON AN ALREADY OVER TAXED POPULATION. THE LIKELY RESULT WILL BE TO FORCE A DRASTIC CHANGE IN THE MANNING PROVIDED BY THE U.F.F.A. FOR BOTH SIDES, BECAUSE OF THIS DECISION, THE OUTLOOK IS GLOOMY.

BASED UPON THESE FACTORS, I HAVE NO OTHER REASONABLE ALTERNATIVE THAN AFFIRM THE AWARD OF A 5.5% INCREASE AND EMT STIPEND AND TO OFFER MY DISSENSION OF THE AWARD OF THE TWENTY YEAR RETIREMENT AND 1% OFFICER INCREMENT.

VERY TRULY YOURS,



NICHOLAS J. OSTAPKOVICH

7/22/91