
In the Matter of the Interest Arbitration

between the
CITY OF RENSSELAER

PERB Case No.:
IA91-008
M90-473

and

**THE PROFESSIONAL FIREFIGHTERS-
FIRE DRIVERS ASSOCIATION,
LOCAL 2643 IAFF**

**NYS PUBLIC EMPLOYMENT RELATIONS BOARD
RECEIVED
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CONCILIATION**

The City of Rensselaer (the "City") and the Professional Firefighters-Fire Drivers Association (the "Association") are parties to a collective bargaining agreement (the "Agreement") for the term August 1, 1988, through July 31, 1991. Although this Agreement has expired, it remains in effect pending ratification of a successor agreement. Article 30 of this Agreement reads as follows:

PENSIONS

All permanent members of the fire department, covered under this agreement, shall be enrolled in the New York State Policemen's and Firemen's Retirement System. Each employee, covered by this agreement, shall have the following plan as set forth by the New York State Policemen's and Firemen's Retirement System:

Plan 375 G - this is a twenty-five (25) year at age fifty-five (55) year retirement plan with a 1/60th option for every year worked beyond twenty-five (25) years to a maximum of 5/60s.

Under mutual agreement with the employer and this bargaining unit, either party may petition for a re-opening of this Article 30 for negotiations prior to the commencement of the third year of this agreement (i.e. prior to August 1, 1990).

The Association petitioned for a reopening of Article 30 prior to August 1, 1990. During the ensuing negotiations, the Association proposed that pension plan 375-g be replaced by plan 384-d (that is, Section 384-d of the Retirement and Social Security Law), which provides a retirement benefit equal to 50 percent of final salary after twenty years of service.

The parties were unable to resolve their differences over the Association's proposal at the negotiating table, and on January 31, 1991, the Association declared impasse and requested the appointment of a mediator. Mediation meetings were conducted on February 25, and March 18, 1991, but without success. On July 12, 1991, the Association filed for interest arbitration, and on September 26, 1991, the Public Employment Relations Board designated the undersigned as members of the Public Arbitration Panel (the "Panel") to which this dispute between the parties was assigned.

The Panel held hearings in Albany, New York, on November 20 and December 17, 1991, at which each of the parties was represented by counsel in making its presentation to the Panel. Both parties submitted posthearing briefs, which the Panel members received on January 17, 1991, when the record of this case was closed.

STATUTORY CRITERIA

Section 209.4 of the State Civil Service Law sets forth the following criteria to be considered by arbitration panels in the resolution of negotiation impasses between public employers and public employee units when such units represent members of Fire or Police Departments:

(v) The public arbitration panel shall make a just and reasonable determination of the matters in dispute. 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 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.

ANALYSIS AND AWARD

With one major exception, the Association's case for the adoption of pension plan 384-d is very strong. The critical importance and hazardous nature of the fire fighter's occupation is obvious, and the City did not challenge the competence of any of the Association members. Nor did the City challenge the accuracy of the Association's data showing that the salaries and pension benefits of Rensselaer fire fighters do not match the salaries and pension benefits of professional fire fighters in most nearby communities, and that the retirement plan 384 benefits available to members of the City's police force are more liberal than those of the plan 375-g covering Association members. Finally, the City agreed that the cost during the next State fiscal year (ending March 31, 1993) of adopting plan 384-d in place of 375-g would be the (estimated) modest sum of \$21,345.

Those arguments are offset, however, by the City's severely limited ability to pay the cost of adopting retirement plan 384-d. As the Association contends (at page 8 of Mr. Hynes's brief), an arbitration panel should give decisive weight to an employer's claim of inability to pay only on the showing of "substantial" proof of "substantive," if not "drastic," fiscal problems. For the following reasons, we find that in this case the employer has met that substantial burden of proof.

First, the City's 1991-92 budget clearly contains no "fat." The property tax rate stands at 97.6 percent of the constitutional limit. Also,

the contingency fund of \$80,000 constitutes only 1.6 percent of the total budget and provides little cushion for unanticipated expenditures required before July 31, 1992, the end of the fiscal year. In approximately the first three months of the 1991-92 fiscal year (from August 1 through November 8, 1991), for example, the City had already spent 39 percent of this fiscal year's appropriation for the Fire Department.

Second, the size of a major source of the City's income -- state per capita aid -- is uncertain. The City's 1991-92 budget assumes such aid will total approximately \$600,000, a lower sum than in recent years, but given the continuing deadlock in State budget negotiations, no one yet knows what the final aid figure will be.

Third, the City has appeared to exert every effort to increase income and reduce expenditures as much as possible. On the one hand, it increased the property tax rate from 1990-91 to 1991-92 (up to 97.6 percent of the constitutional limit, as noted above); it instituted user trash fees in 1990-91, which are expected to provide about \$300,000 in 1991-92, a sum that would otherwise be paid out of general funds; and it also increased water rates in 1991-92.

On the other hand, the City's 1991-92 budget provides for a slight reduction in total expenditures from the previous budget year, in spite of the expected increase in the cost of items such as health insurance. It is true that cutbacks were more severe in the Fire Department than in the Police Department or Department of Public Works. Since July 1991, the City has reduced the number of paid firefighter positions from 21 to 17 --

laying off two individuals and not replacing two others who retired -- but it has not made similar staffing cuts in the other two major departments.

The City's explanation of that pattern of cutbacks was, however, persuasive. Because a large number of the members of the Fire Department are unpaid volunteers (the paid members serve primarily although not exclusively as drivers), the City was able to provide approximately the same level of fire protection (or at least not a significantly diminished level) with 17 paid firefighters as with 21 by closing one of the City's five fire stations and concentrating the remaining personnel and equipment in four stations. Proportionate cuts in the paid staff of the Police Department and the Department of Public Works would have resulted in severe cuts in the services provided by those departments, however, since obviously they have no unpaid volunteer members.

Fourth, although the added cost to the City of adopting plan 384-d would be only about \$21,000 in the first year, that cost may well increase in future years -- and the decision to adopt 384-d, once made, can not be reversed at a later time.

One final point deserves to be stressed. The Association made clear that a major reason why its members desire an improved pension plan is that they fear further layoffs will soon occur, and several members would qualify for benefits under plan 384-d who would not qualify, or would not qualify as soon, under the present plan 375-g. That fear of further layoffs is certainly understandable; City officials testified, in effect, that if the City's financial situation did not improve, they would probably seek further

layoffs of paid firefighters.

But Association members have strong protection against further layoffs, at least in the immediate future, in the form of Article 10 of the 1988-1991 Agreement, which is still in effect. That contract provision reads in part:

Work presently being performed by the Rensselaer Uniform Fire Fighters (Fire Drivers) shall not be performed by a non-union member of the uniformed force or sub-contracted to any party without the express written consent of the bargaining unit.

Both parties apparently agree that Article 10 prevents further layoffs of drivers without Association consent. Further layoffs of paid drivers, that is, would require the employment of other drivers (or the use of volunteer drivers) in order to staff the essential equipment around the clock, and Article 10 prohibits such substitution of other drivers without Association consent.

Our decision that the parties should retain the present plan 375-g therefore does not mean that Association members have no protection against further layoffs, for Article 10 remains in effect until the parties negotiate a successor to their 1988-1991 Agreement. Thus, when the parties resume their negotiations over a successor contract, on the staffing-pension issue each party will have something the other wants and can obtain only through mutual agreement, which is not a bad basis for negotiation.

For all those reasons, we hereby deny the Association's proposal that Article 30 of the Agreement be amended to provide pension plan 384-d in place of plan 375-g.

January 31, 1992



Donald E. Cullen,
Public Panel Member and Chairman

January 31, 1992



James W. Roemer, Jr., Esq.,
Public Employer Panel Member

RE: DISSENTING OPINION
PERB CASE # IA 91-008
RENSSELAER FIRE FIGHTERS

The Rensselaer Professional Fire Fighters Association Local 2643 I.A.F.F. presented a very strong case for amending Article 30 of the Agreement for replacing the 375-G pension plan with 384-D pension plan. Testimony offered by the Association clearly displayed that the total financial package of adopting the new pension plan (384-D) would be at the very modest sum of \$21,345. This evidence was introduced by verbal statements given under oath, written documents presented as union exhibits and also in a written post hearing brief submitted by Mr. Anthony J. Hynes.

The arbitration award not to grant retirement plan 384-D is based solely on the theory that the City of Rensselaer is severely limited concerning the ability to pay the cost of adopting this pension plan. The issue and question of ability to pay was introduced by both parties involved in the arbitration case. This subject was thoroughly explored during testimony, cross examination, written documents presented as evidence which were submitted at the two days of hearings and also in post hearing briefs.

The ability to pay has been considered to be the focal point or the only issue to be resolved when an arbitration case has a financial impact. History has shown that is not correct and that the financial package attached not become the priority argument for an arbitration case. The early part of this century addressed the issue of ability to pay during the "proceedings of Federal Electric Railways Commission" (held in Washington, DC, during the months of July, August, September and October 1919) by William H. Taft in the Washington, DC, Government Printing Office, 1920, Volume 2, pages 1-2. Most recently, this issue was examined in the City of Buffalo vs. Rinaldo, 41 NY 2d 767. The rare circumstances with regard to the Rinaldo Case language were not considered or included in this (Rensselaer Fire Fighters) arbitration case.

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Thomas M. McCormack

Mr. Edward J. Fennel testified during his statements that the amount of \$21,345. was the money needed to adopt pension plan 384-D and would become .41% (41/100 of one percent) of the total general fund budget for fiscal 1992 (\$21,345/\$5.175 million).

Testimony given by both parties state that there is over \$600,000. in the reserve fund that is unappropriated and an amount of \$80,000. in a contingency fund. The City of Rensselaer has increased its' water rates in 1991-1992 to augment the balance of the water fund while also transferring \$120,000. from the General Fund to the Water Fund.

Rensselaer is similar to many other cities because it estimates the tax revenues at a lower level than the actual amount of monies received when the taxes are collected.

This year (1992) is an election year for the New York State Legislators and it is very possible that a state budget will be in place by early April. This budget should provide for a reduction of the Police and Fire Pension System rates. Currently the rates for the New York State Police and Fire Retirement System are 11.4% for Tier I members and 20.6% for Tier II members. These are projected rates for the retirement system.

The history of the Police and Fire Retirement System illustrates that the rates that are projected and passed onto the municipalities have always been much higher than the actual rates paid into the system by the municipalities.

This year the Projected Unit Credit (PUC) Legislation Program Bill submitted by the State Comptroller and also supported by the New York State Professional Fire Fighters Association and the State Municipal Police Unions includes language that 95% of the municipalities will receive a cost savings on retirement for the Police and Fire System while the other 5% increase will only effect those areas located in Suffolk and Nassau counties.

The Association presented written letters signed by two members who stated that they would take advantage of the 384-D Pension Plan as soon as this option was available. The intention to take this option would be a cost savings for the City in the tens of thousands of dollars over the remaining period of the contract. The City of Rensselaer has allowed other city employees to participate in an early retirement incentive program without any cost savings to the city but has

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refused the same for the fire fighters.

New York State Police and Fire Retirement Pension Plans 375-J and 384-E cannot be taken to arbitration as an issue because of legislative intent but past history has provided that all other plans for retirement may be negotiated and brought to the arbitration table under the provisions of the Taylor Law.

This arbitration case has nothing to do with Article 10 of the agreement and is well illustrated in the City's post hearing brief under the title of "issues". The fear of layoffs and possible abolition of the paid professional fire service in the City of Rensselaer is clear and a very real concept for the members of Local #2643 I.A.F.F. It is something that has yet to be tested, but most likely will become another major issue if the city continues with the layoff program and the closing of fire companies in the future as was quite obvious by statements given by Mayor Joseph Harrigan during his testimony. Reduction of the staffing levels of the fire department would be much more sensible for both parties if a system of attrition with the use of pension plan 384-D and the removal of layoffs was put into action.

The City of Rensselaer has tried to balance its budget on the backs of the members of the Rensselaer Fire Fighters Association Local 2643 I.A.F.F. by providing salaries, benefits and a retirement pension plan that is substandard not only to the Rensselaer Police Department but to most of neighboring fire department local unions in the Capital District Area.

The City has instituted a layoff program for the fire fighters which the City states will continue in the future and has demanded no similar cut-backs or reductions for any other city departments or employees.

In order to avoid the loss of positions and employment the fire fighters union offered a counter proposal of approximately \$100,000. of financial value which was contained in their contract agreement and fire department operating budget back to the city. This financial proposal was totally refused by the City Council and the Mayor of Rensselaer.

This factor alone should remove any question of inability to pay as stated by the City.

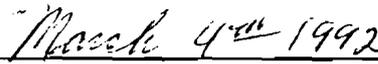
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The use of pension plan 384-D could have been a great vehicle for the City of Rensselaer to use in order to prevent cutbacks in the fire department and reducing the staff level through attrition while at the same time accepting the union's financial proposal and deferring the increased amounts paid for legal fees accrued during mediation and arbitration proceedings.

Based upon all of these factors, my personal knowledge, experience and involvement with this arbitration case, I have no other alternative than to reject the proposed award and hereby offer my dissension.

Respectfully submitted,


Thomas M. McCormack


Dated, March 4, 1992