

State of New York
Public Employment Relations Board

Impasse between

City of Elmira

and

Elmira Professional Firefighters Association

No. IA91-038; M91-221

NYS PUBLIC EMPLOYMENT RELATIONS BOARD
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CONCILIATION

Interest Arbitration Decision and Award

Before: Robert J. Rabin, Chair, Gary B. Slater, Public Employer
Panel Member, James F. Young, Employee Organization Panel Member

Procedural Background

The Panel was designated by PERB on March 4, 1992 to hear and determine this dispute. The Panel held hearings in Elmira, N.Y. on June 1, July 2 and August 18, 1992. The parties presented extensive data and testimony. The Panel Members reviewed these materials, and convened on October 19 to discuss preliminary determinations. The Panel subsequently reviewed drafts of proposed findings and conclusions. In arriving at this Decision and Award, the Panel has followed the statutory considerations set forth in Section 209.4 of the Civil Service Law.

Background of Negotiations

The parties met during 1990 to negotiate for a new agreement effective January 1, 1991. The negotiators reached a tentative agreement on January 25, 1991, subject to ratification and approval on both sides. However, the City subsequently rejected the tentative settlement, citing fiscal exigencies. The parties returned to the bargaining table to negotiate an agreement that would cover 1991 and 1992. Those negotiations resulted in impasse over the issue of salaries. The parties agreed that the only item that is before the compulsory interest arbitration panel is salaries for the two years in question. All other items are agreed to by the parties. The Panel's determination of the salary increase will then become part of the two year agreement reached on all other items.

The tentative agreement reached by the parties provided for a 5.8% salary increase for 1991. In addition, the parties had agreed to a clause that would have prevented layoffs during the contract

period. After the City rejected the tentative agreement, including its no-layoff clause, the City reduced staff in the bargaining unit by seven positions. One firefighter was recalled, but the net loss of bargaining unit positions remains at six.

Positions of the Parties

The City rests its case squarely on the contention of inability to pay. It does not contend that it cannot fund any salary increase at all, but that fiscal constraints make it unable to meet the union's 5.8% figure for 1991, or any figure of that magnitude. As the Panel reads the City's evidence and testimony, the City indicates at least by implication that it is both willing and able to agree to some modest salary increase for the contract term. However, the City did not indicate any specific salary figure that it thought was reasonable and within the City's ability to pay.

The Union's position is three-fold.

First, it asserts that the tentative agreement reached for 1991 should serve as the foundation for the Panel's determination for 1991. It contends that the award for 1991 should be considerably higher than the 5.8% tentative figure, since that tentative settlement also included a no-layoff clause. Without the constraints of that clause, the City has cut six bargaining unit positions. This has had an adverse impact upon the remaining members of the unit, and has provided savings that can be used for a salary increase. The Union does not challenge in this proceeding the City's legal right to reject the tentative settlement. However, the Union argues that since the City's bargaining team was prepared to reach agreement at 5.8%, that is strong evidence that a 5.8% salary for 1991 is a fair and feasible increase.

Second, the Union disputes the City's claim of inability to pay.

Third, the Union argues that even if the City faces economic hardship, those difficulties are no different than the constraints faced by all other comparable cities. Both parties have used a set of six upstate cities for comparison purposes. While those cities are subject to the same economic constraints as Elmira, they have managed to provide salary increases for the two years in question of an average of 10.7%. Therefore the Panel should award a salary increase of at least that amount.

Organization of Decision and Award

The Panel will deal first with the City's presentation, particularly its claim of inability to pay. While the Panel concludes that the City has not met the difficult burden of showing

an inability to pay, the City has raised legitimate economic concerns. The Panel will then turn to the Union's data and arguments in support of its salary claims. Finally, the Panel will attempt to reconcile the conflicting positions, and will issue its decision and award on salaries.

The Panel reminds the reader that the documentary evidence in this case is literally voluminous. Much of it is contained in two bound volumes, one for each side. We make many references to these two volumes, but in the interests of brevity we do not summarize this data in great detail.

The City's Evidence

The heart of the City's case is in its evidence book, City-2. We made cross references as necessary with City-1, the 1992 budget.

We first put the City's case in perspective by setting out the costs of implementing a salary increase. A 5% salary increase in this unit would cost approximately \$125,000. That would translate into a tax increase of 1.66%. A 1.66% tax increase would in turn require the current amount to be raised by taxes, \$7,270,000 (City-1), to go up another \$116,000. The average taxpayer's tax bill of \$613 would rise 1.66%, or less than \$10, for each year in which the agreement is funded. (The figures on tax increases found on page 26 of City-2 are not limited to wages, and reflect other factors as well).

1. Overall economic health of the city.

A. The City floated a new bond issue of over a million dollars in February, 1990. In its presentation the City argued that this shows (a) the need to borrow money to meet current operating costs, (b) a reduction in Moody's bond rating from A to Baal, along with negative comments ("a declining population and significantly below average wealth levels, combined with a stagnant tax base"); and (c) accompanying statistics that show per capita income and percentage growth in per capita income to be slow compared with state and national figures.

B. Related to the above question of Elmira's overall economic health, City exhibits (p. 2-4 of City-1) show per capita income and housing values to be generally lower than a comparison selection that includes the cities used for salary comparison.

2. Constitutional Taxing Margins. The City's maximum taxing power is determined by a formula based on property values. The figures show that in the last 7 years the maximum figure has gone up 18.7% (as property values increase), while tax levies have risen 54.2%. That naturally has shrunk the available tax margin, that is, the difference between the maximum taxing power and what is actually taxed. The tax margin has shrunk from \$2.6 million to \$1.3 million

over this period. There is some dispute over the size of the present tax margin, as it is calculated on property values that are the subject of litigation. Overall, the trend is very disturbing. The City's ability to continue to raise taxes is jeopardized as the tax margin shrinks.

On the other hand it is incontrovertible that the tax margin of at least \$1.3 million is more than enough to absorb any reasonable salary increase that is awarded here. For example, under the figures set out earlier, a 5% salary increase in this unit would require the current amount to be raised by taxes, \$7,270,000 (City-1), to go up another \$116,000. This is well within the above tax margin figures. On the other hand, if this continues on a multiple year basis, and in other units, such as the police, the taxing margin will soon be exhausted. The margin may expand somewhat as property values are adjusted, but this is an area for concern in the near future.

3. Real estate assessed values.

The figures (City-2, p. 6) show a decline of 2.7% in the assessed value of properties over the last 7 years. If these figures are correct they underscore some of the points raised in item 1 about the City's overall economic health, and they point to a further diminished tax margin in the future, since the tax margin is calculated on property values.

However, these figures tell another story as well. The documents submitted by the City to determine its constitutional tax limit (City 2, pages 7-8) show that the City has been using an equalization rate of from .1877 to .1722. The equalization formula for 1992 is the subject of litigation. The state has determined that the equalization rate must be dropped to .1297. The City disputes that, and uses a figure of .1530 (compare pages 7 and 8), but one still considerably lower than the equalization figures it has used in the past. Either new equalization figure shows that the City has understated the full valuation of taxable real estate. Using the state's equalization figure, the full valuation jumps from \$416,514,000 to \$549,747,533. Under the City's new equalization figure full value jumps from \$416,514,000 to \$466,027,810, an increase of more than 15%. This prior understatement of full property value has three consequences:

(a) The statements in item 1 about declining property values are not totally accurate. Property values have in fact gone up, but the City has understated them.

(b) The constitutional taxing margin goes up accordingly.

(c) The taxing efforts of the taxpayers must be looked at in light of these increasing property values.

4. Increases in real property taxes.

The City's data (City-2, page 9) shows that the tax rate on the assessed values using the .1297 equalization rate has gone up from \$70.54 to \$108.40, an increase of over 66% in a seven year span. For the average homeowner the tax bill has gone from \$398 to \$613. And an additional fee for garbage collection increases the 1992 figure even more.

However, the change in equalization rates means the City has exaggerated the percentage increase in taxpayers' rates. The assessed value has remained exactly the same for 7 years. But the new equalization rate that the city is using for its calculations (.1297 on City 2, page 9) is in fact a huge drop from previous figures (see page 7). Under this equalization figure property values have gone up from \$416,514,000 to \$549,747,000, an increase of almost a third. Thus a substantial portion of the increased tax burden is the result of increased property value rather than increased taxes. This means that property taxes have been based on unrealistically low property values, and taxpayers have been getting off lightly. Now, with the change in equalization, the tax burden is catching up.

The reality, though, is that the average property owner has watched his taxes go up in the amount indicated. While it may seem that \$613 is not an excessive amount for an average taxpayer to pay for municipal services, it is a large chunk of the \$7,856 per capita income for this area (although this makes the unrealistic assumption that only one wage earner resides per household).

5. Expenses, revenues and surpluses

Pages 11-13 of City-2 show an increase in revenues of 17% and an increase in expenses of 26% over six years, a trend that cannot continue much longer. Where in the early years it generated surpluses, it now produces deficits, for example, \$655,000 in 1991. On the other hand, the fund balance (p. 13), while declining from 2,484,000 in 1989 to \$1,594,000 in 1991, is actually quite close to the 1986 figure of \$1,625,000. This shows that the City was able to build surpluses until 1989, but that the bottom has now fallen out. While the fund balance provides a short term fix for balancing the budget (see the article in U-3 about how the City Manager intends to balance the 1992 budget), that can't go on forever.

Page 12 of City-2 shows the proportion of the sources of revenues. Property tax revenues have gone up 43.6%, and this is the biggest offset for the 32.4% loss in state aid.

The parties engaged in considerable argument over whether other revenues are available in the budget, (pejoratively characterized as "hidden"), and some evidence was presented after

the hearing that substantial money has become available because of a recalculation of the pension figures (although it is already tapped for something else). This can be a debate without end. As persons experienced in negotiations, all three panel members take notice of the fact that there is usually some flexibility in budgets to take care of salary increases, and we have no reason to expect otherwise here. In this case, both fiscal years have run their course, so it should be easier to determine what is available.

6. State aid. This is the most negative set of figures before us. State aid has declined from \$3.3 million in 1986 to \$1.7 million in 1992. The drop has been precipitous in the last two years: \$3.1 to \$2.1 to \$1.7. On a total budget of \$17,500,000, the previous state aid figure would have covered 20% of the City's needs. And in previous years it undoubtedly provided an even greater percentage of the City's needs, since when state aid was \$3.3 million the budget was in the \$14,000,000 range (p. 11), and state aid probably 25%. Now it drops to about 10%. This is an enormous drop, made up for the most part by the increase in property taxes.

7. Expenditures, necessary or not. A substantial part of the hearing was an examination of expenditures made by the City in the last two years, including expenditures around the time of the arbitration. The union attacked the wisdom of or need for such expenditures, while the City defended them. Some examples are the renovation of Dunn Field, replacement of equipment, and courthouse renovation. Extensive argument and testimony was provided about whether these expenditures were necessary, what sources of revenue were available to fund them, and what impact they might have on future income.

We cannot make conclusive judgments about these expenditures. Those in charge of running the City must set its priorities. No doubt judgment was exercised, and there is always room to make different judgments. Almost any one of these decisions could have been subordinated to the \$125,000 necessary to fund a 5% wage increase. Wages are an ongoing obligation of a city, and the fair, going rate is set by the market, as we will explain further below. The City must be prepared to meet these expenditures and to subordinate other items until reasonable salary needs are met.

Conclusions on Inability to Pay

We are not convinced by this evidence that the City has demonstrated an inability to pay. In none of the key areas relied on by the City -- state aid, tax efforts, tax margin -- is the City at the point where it cannot meet a reasonable wage bill. And there is undoubtedly some flexibility in the budget, and some room to rearrange priorities, to pay firefighters to provide this essential service.

While we do not agree that the City is unable to pay, we acknowledge that there are real fiscal constraints upon the City, and these must be considered in our overall recommendations, which follow our summary of the Union's evidence.

The Union's Presentation

The heart of the union's case is found in its data book U-2. The first bar chart compares 6 cities--Auburn, Binghamton, Elmira, Jamestown, North Tonawanda and Watertown. Both sides agree that this is a relevant comparison group.

The chart compares the loss in state aid from the 89-90 fiscal year to the 91-92 fiscal year. Elmira's state aid drops 39%. The other five cities have slightly higher cuts in state aid, from 41%-43%. The City of Elmira's inability to pay claim is based in substantial part on this loss of state aid. Yet, the other five comparison cities provided reasonable salary increases in the face of even greater state aid cuts.

The City argues that the drops in state aid don't tell the whole story for those comparison cities. In the arbitration the City has documented a number of other negative impacts upon Elmira's budget. None of these are shown to be factors in the comparison cities. The City is quite correct that we can only speculate about whether these other factors are at work in the comparison districts. However, we are limited to the evidence before us, and absent any other data, the fairest assumption is that all cities are going through relatively similar problems in these times.

The comparison increases are charted in the Union's materials as follows:

City	1991	1992	Both years
Auburn	4.5%	5%	9.5%
Binghamton	6%	6%	12%
Jamestown	6%	5%	11%
N. Tonawanda	6%	6%	12%
Watertown	3.5%	5.5%	9%
AVERAGE	5.2%	5.5%	10.7%

In addition, the Elmira Police unit received a 4/3% increase for 1991, which translates roughly into a 5.5% increase for the year. That contract, as we all know, is open for 1992.

For reasons already stated, the Panel concludes that the City of Elmira has not made a case for inability to pay. While it has demonstrated real constraints upon its ability to fund a salary increase, there is no showing that Elmira is operating in a significantly different economic climate than the comparison cities. Therefore, under the statutory criteria, the pattern of salary increases in those cities must be a significant component of this award.

Conclusions

The panel is in agreement that the figure of 5.8% that the parties tentatively negotiated for 1991 should be awarded for 1991. Those closest to the situation in 1991, and who had access to the relevant information, concluded at the bargaining table that a 5.8% settlement was both warranted and practicable for 1991. This is not a conclusion that the City is bound as a matter of law to accept the tentative figure; the City's right to reconsider when it took a closer look at the figures, away from the bargaining table, is not challenged here. Rather, a consideration of the City's own judgment at the bargaining table, together with concern for the integrity of the bargaining process, convinces us that the 5.8% figure should be awarded. The City's concern about its ability to pay is reflected in our award for the second year.

The 5.8% figure for 1991 is within the range of comparable settlements for 1991 that were placed in evidence. Three others were higher, at 6%, while two others were considerably lower. The 5.8% is considerably higher than the average of 5.2% for the comparison figures, and the panel takes this into account in fashioning its award for 1992.

These 1991 salaries were negotiated in an earlier economic climate, one appropriate for measuring the 1991 increase. They were reached within the same fiscal constraints as the parties faced in Elmira when they reached a tentative agreement in 1991. Each of those comparison cities faced at least the same reductions in state aid for 1991, yet on the average they funded salary increases for 1991 of 5.2%. We think that neither party in this case should be advantaged or disadvantaged by the fact that this proceeding takes place more than a year after the time that agreement would normally have been reached for 1991. Thus we give those 1991 figures significant weight in adopting the tentative 5.8% agreement as our award for 1991.

The 1991 average of 5.2% is in fact slightly lower than the Elmira police unit for that year. It is also lower than the average of the other cities in U-2 that were reported but not charted for 1991. We mention this simply to underscore that this figure for 1991 is relatively conservative in comparison with a number of other small city units in the western part of the state and in the capital district.

The Panel takes a different view with respect to the 1992 salaries. For 1992, it gives less weight to the comparable figures and more to the economic constraints raised by the City in this proceeding.

First, the 1992 salaries in the comparison districts were all apparently negotiated as part of multiple year agreements reached no later than the first part of 1991. They are predicated on a different economic picture than the present. We needn't provide specific documentation that economic conditions have worsened in 1992. The 1992 Presidential race was all about that. The Panel is not confident that the 1992 figures, reached back in 1991, are a representative universe for settlements that must be reached and awards that must be made in the economic climate of 1992. Admittedly we have little guidance in the record on this score. We have before us no figures for settlements reached in 1992. All five of the comparison districts have 1992 figures, but reached at an earlier time. Only 3 of the other 11 districts that are listed in U-2 have settlements for 1992, which suggests that the overall projection for 1992 is quite uncertain. If the situation were reversed, and economic conditions improved for 1992, we think the union would be quick to argue that the current economic conditions should control, and that settlements reached in earlier times should be given less weight. That is the approach we take here when the shoe is on the other foot.

While we give less weight to these figures because they were negotiated in a different economic climate, the fact remains that they are the increases negotiated for 1992 in other comparison cities. Firefighter salaries in Elmira are measured in part by a comparison with their counterparts in these cities. We must not let firefighter salaries in this unit slip further in relation to those other cities. The same comparative data shows that in comparison with the other five target cities, as well as with the other small cities listed in U-2, Elmira salaries are relatively low. In a list of 16 comparable districts Elmira salaries are fourth from the bottom (even if we drop the three highest cities listed by the union because they may not be relevant comparison cities, Elmira is still in the lowest third in a list of 13 cities). Of the six comparison cities in the bar chart, only Jamestown pays a lower salary to its firefighters. Those salary comparisons help establish the value of a firefighter's job, and this panel should not issue an award that reduces any further than absolutely necessary the relative pay of an Elmira firefighter. We also take into account the impressive list of responsibilities assumed by firefighters, and the ongoing training they must undertake to deal with new technologies. In view of these factors too, their salaries should not be allowed to decline.

The Panel faces a difficult job in awarding an increase for 1992, for, as indicated above, there is little hard data showing 1992 salaries negotiated in the 1992 economic climate. All the

figures we have examined are based on settlements reached at an earlier period. The Panel does not think the 5.5% average of salaries for 1992 is representative of the current economic climate. While we cannot speculate on what current settlements would look like, we doubt they would go higher than the 5.2% average of the previous year, and might be lower.

While the comparable salary figures are uncertain, at the same time it is clear that the City faced serious economic constraints in 1992. Although the City did not make a case of inability to pay, all the indicators are cause for concern. State aid is down, expenditures are up, the taxing margin is narrower, and the tax burden is higher. This trend cannot go on forever. Therefore, the Award must provide a reasonable but cautious salary increase for 1992.

All the interested parties must bear some of the brunt of these difficult economic times. Taxpayers must realize that there is an ongoing cost of providing adequate fire protection. Taxpayers must pay for this, and cannot expect the burden to fall on the employees in the form of reduced real wages. At the same time, firefighter salaries must reflect some of the current reality. Salaries cannot be as high as they would be in better times; otherwise the taxpayers would bear an undue share of the burden.

Based on all these considerations, the Panel awards an increase of 4.5% for 1992. This yields a two year award aggregating 10.3%, comprised of 5.8% and 4.5%. The award is retroactive to January 1, 1991. As a practical matter, because of the timing of this award it appears that the entire wage increase will be retroactive. Nevertheless, for purposes of calculation, each year's award is treated separately, and the 1991 award must be given its normal effect in calculating the increase for 1992.

Throughout the discussions of the Panel, the Union panel member has argued vigorously that the award should be higher, reflecting both the tentative settlement for 1991, the withdrawal of the no layoff clause that was part of that tentative settlement, and the higher range of figures for comparison cities in 1992. The Employer panel member has contended with equal force for a more modest award in these difficult economic times. The panel has carefully considered these contrasting positions in light of the body of evidence, and has attempted to accommodate them in order to reach an acceptable award.

AWARD

This opinion shall constitute the Panel's Award on salaries for the 1991 and 1992 contract period. The Award shall become part of the parties' overall agreement, already reached, on all other items of dispute.

Robert J. Rabin

Robert J. Rabin
Public Member and Chair
dated: December 8, 1992

James F. Young

James F. Young
Employee Organization Member
dated: December 10, 1992

Gary B. Slater

Gary B. Slater
Employer Member
dated: December 29, 1992

Dissenting opinion
I believe the monetary award is too high given the current economic conditions and the fiscal situation of the city and as such should have been more in line with same. *GBS.*