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In The Matter of Interest Arbitration

- between -

CITY OF LOCKPORT

- and -

LOCKPORT PROFESSIONAL FIREFIGHTERS
ASSOCIATION, LOCAL 963
(Interest Arbitration)

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A W A R D

O F

A R B I T R A T I O N

A N D

O P I N I O N

REPRESENTATION

For the City

P. Andrew Vona, Esq., Corporation Counsel, Spokesman
Allan D. Miskell, former Deputy Corp. Counsel, Witness
Robert J. Peer, City Assessor, Witness
James Ashcraft, City Treasurer, Witness

For the Association

Bernard Stack, Esq., Spokesman
Kevin R. Decker, Economist, Witness
Thomas Passuite, Fire Chief, Witness
Paul M. Beakman, President, Lockport PBA, Witness
Randall J. Parker, Acting President, Local 963, Witness
James Donner, Ass't Fire Chief-Lockport, Witness
Joseph J. Montesano, 1st District Vice President, Witness

For the Panel

Samuel Cugalj, Chairman and Public Panel Member
Charles J. Morello, Employee Organization Panel Member
Richard P. Mullaney, Public Employer Panel Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD
FEB 04 1998
CONCILIATOR

BACKGROUND

The City of Lockport (hereafter "CITY"), located in Niagara County, has a estimated population of 24,400, and covers an area of approximately eight (8) square miles. It has a paid fire department, and the Lockport Professional Firefighters Association, Local 963 (hereafter "ASSOCIATION") represent approximately fifty-nine (59) bargaining unit members, which is entire fire department with the exception of the Fire Chief.

A two (2) year Collective Bargaining Agreement expired on December 31, 1995, and was extended by a two (2) year memorandum of agreement expiring on December 31, 1997. After several unsuccessful negotiating sessions, the ASSOCIATION on October 23, 1997, petitioned the New York State Public Employment Relations Board (PERB) for mediation services. A mediator met with the parties on at least two (2) occasions, but was unable to resolve their differences. On April 14, 1998, PERB appointed this three (3) member Public Arbitration Panel to resolve the dispute.

Formal Hearings were held relative to this impasse in Lockport, New York on September 30 and October 13, 1998. At the Hearings, the Panel received extensive material including nineteen (19) CITY and twenty (20) ASSOCIATION Exhibits. At the Hearings, the parties were given full opportunity to present arguments in support of their positions on the open items, introduce evidence and witnesses, and to engage in their examination and cross-examination. They accepted the opportunity to file Post Hearing Briefs, and both were postmarked by the agreed upon date of November 3.

Panel members independently reviewed the Exhibits, notes, Hearing and Post Hearing Briefs extensively, and met in Executive Session on January 8, 1999 to deliberate the issues. The Panel fully discussed the merits of the parties' arguments, the evidence submitted, and structured this AWARD in view of satisfying Section 209.4 (v) of the Taylor Law as follows:

"(v) the public arbitration panel shall make a just and reasonable determination 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 the 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 interest 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 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 of salary, insurance and retirement benefits, medical and hospitalization benefits, paid time off, and job security.

(vi) the determination of the public arbitration panel shall be final and binding upon the parties for the period prescribed by the panel, but in no event shall such period exceed two years from the termination date of any previous collective bargaining or if there is no previous collective bargaining agreement then for a period not to exceed two years from the date of determination by the panel. Such determination shall not be subject to the approval of any local legislative body or other municipal authority."

AWARD

ASSOCIATION DEMAND 1: WAGES (ARTICLE 5)

**THE WAGE SCHEDULE IN THEIR AGREEMENT IS INCREASED BY 4.5%,
WITH MEMBERS RECEIVING THEIR APPROPRIATE STEP INCREASE
RETROACTIVE TO JANUARY 1, 1998.**

ASSOCIATION DEMAND 4: PAY FOR PRE-SHIFT SAFETY EQUIPMENT CHECK (NEW)

THIS DEMAND IS DENIED.

ASSOCIATION DEMAND 8 - HEALTH BENEFITS FOR POST-1984 RETIREES (ARTICLE 11)

THIS DEMAND IS DENIED.

ASSOCIATION DEMAND 9: ACCUMULATED SICK LEAVE PAY (ARTICLE 9)

THIS DEMAND IS DENIED.

CITY DEMAND 1: LIMIT NUMBER OF VACATIONS AT ONE TIME (ARTICLE 7)

THIS DEMAND IS DENIED.

MISC. 1: TERM OF AGREEMENT

THIS AGREEMENT IS EFFECTIVE 1-1-98 AND EXPIRES 12-31-98.

**ALL OTHER ISSUES PREVIOUSLY AGREED TO BY THE PARTIES ARE
HEREBY REAFFIRMED AS PART OF THE NEW AGREEMENT.**

STATE OF NEW YORK }
COUNTY OF ERIE } ss:

On this ^{FEBRUARY} 15th day of ~~January~~ 1999, before me personally came and appeared Samuel Cugalj, to me known and known to me to be the individual described in, and who executed the foregoing instrument, and he acknowledged to me that he executed the same.

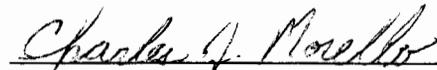

SAMUEL CUGALJ
Public Panel Member and Chairman
Concurs

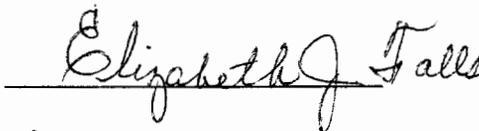


ARLENE WISNIEWSKI
Notary Public, State of New York
Qualified in Erie County
My Commission Expires 12/31/95

STATE OF NEW YORK }
COUNTY OF NIAGARA } ss:

On this day of January 1999, before me personally came and appeared Charles J. Morello, to me known and known to me to be the individual described in, and who executed the foregoing instrument, and he acknowledged to me that he executed the same.


CHARLES J. MORELLO
Employee Organization Panel Member
Concurs



STATE OF NEW YORK }
COUNTY OF NIAGARA } ss:

On this day of January 1999, before me personally came and appeared Richard P. Mullaney, to me known and known to me to be the individual described in, and who executed the foregoing instrument, and he acknowledged to me that he executed the same.


RICHARD P. MULLANEY
Public Employer Panel Member
Concurs

ELIZABETH J. FALLS
Notary Public, State of New York
Qualified in Niagara County
My Commission Expires 5/31/02

CHAIR'S OPINION

In determining the preceding AWARD, the Panel did take into account its statutory responsibilities under Section 209.4 of the Taylor Law. For each issue, the Chair summarizes the position of the parties and the Panel's rationale for its decision.

ASSOCIATION 1 - WAGES (ARTICLE 5)

ASSOCIATION They sought wage parity with the Lockport police bargaining unit. They allege that it was uncontroverted that the Lockport police received higher pay and benefits than the firefighters unit did in 1997. The latter argue that a comparison between the two reflects that the job duties, skills and qualifications are "nearly identical in all respects except that the firefighter workload is more laborious and strenuous." Additionally, Lockport firefighters now are required to be certified Emergency Medical Technicians and those job duties, skills and qualifications add value to warrant a more competitive wage settlement. They claim they are not competitive in the benefits area with Lockport police and in other fire department comparisons. For example, they use the fact that the ASSOCIATION does not have the 384e retirement benefit, when all other communities in their wage/benefits comparisons have them. This is an approximate savings for the CITY of seven percent (7%) per year for the last seven (7) years. All other cities and communities provide retirees' health insurance and incur those costs, but the CITY does not. Many other communities in their comparisons also provide personal leave days, education pay for all ranks, some receive shift pay, among others.

ASSOCIATION 8: HEALTH BENEFITS FOR POST-1984 RETIREES (ARTICLE 11), AND
ASSOCIATION 9: ACCUMULATED SICK LEAVE FOR POST-1984 RETIREES (ARTICLE 9)

ASSOCIATION They were clear in expressing their priority of reestablishing this benefit. The ASSOCIATION alleges this unit is the only firefighters unit in the state without some form of health insurance coverage for retirees. They believe there was some sort of commitment made by the CITY, but unfulfilled, to restore this benefit. The ASSOCIATION argues against the two (2) system of benefits in the unit, as it lacks uniformity to people who have to work side-by-side. Those hired before 1984 enjoy the same fully paid health insurance that other municipal employees enjoy. In the next several years, the first retirement in the post 1984 hirees group will become eligible, and without health insurance, firefighters may prolong their retirement. This would neither be in the CITY or the firefighters' best interests.

CITY The two (2) tier makeup of these benefits has been discussed on many occasions. All CITY employees have this exact system the ASSOCIATION seeks to have changed. The CITY negotiated for the change in 1984, and the CITY argues that this Panel should respect this and allow the parties to negotiate it back only when both agree. The CITY attempted to work with the ASSOCIATION's proposal of a zero percent increase in exchange for 384e in the first year, and the elimination of the two (2) tier benefits concept in the second year, but it was too expensive. The CITY points out that the cost of health insurance for current retirees has increased seventy-five percent (75%) since 1992 and adding additional cost for the post 1984 hirees' health insurance would add a significant and prohibitive cost to taxpayers. The CITY points out that their assessed valuation has changed little

since 1994 and marginally since 1990, reflecting on the CITY's stagnant economic situation. The amount raised by property taxes has increased from \$4MM in 1990 to \$6.5MM in 1998, but changed little from 1995-1998. One of their exhibits shows the reduction in full value of their ten (10) largest taxpayers dropped \$1,526,962 from 1985 to 1998. Finally, the CITY's long term debt has increased from \$6MM in 1988 to \$16MM in 1998.

PANEL

In their 1984 negotiations, the ASSOCIATION exchanged post 1984 hires' health insurance for higher wage increases. It has alleged CITY representatives made a commitment to restore those benefits at a later time. The Chair was interested in substantiating this claim either through testimony or documentation, but was unable to do so. More likely, some CITY officials were sympathetic to the ASSOCIATION's position at that time, but they were not in a position to bind the CITY to such a commitment. At the present time, all CITY employees fall under the two (2) tier system the ASSOCIATION seeks to alter. Therefore, realistically, the CITY may be pressured to extend any change to other bargaining units, incurring yet additional costs. Much of the economic rationale for all benefit demands follow the comments and evaluation made under the wage demand above. In addition to those comments, the Chair notes that the CITY has been adversely affected by a decline in State aid and the county's sales tax revenue over the last several years. While the ASSOCIATION makes the argument that the CITY has the ability to raise taxes, the Chair understands the CITY's reluctance to do so given population demographics and economic considerations. From 1989 through 1998, \$399,379 in assessed valuation has been shifted from commercial, industrial and utilities tax rolls to residential property owners. The tax rate per \$1,000 of assessed value has increased approximately \$2.50/\$1,000 of assessed valuation (26%) from 1990-98. Increasing property taxes, in this environment, may be easier said than done.

MISCELLANEOUS 1: TERM OF AGREEMENT

PANEL The Panel was not able to structure a two (2) year Award, despite several attempts to do so in Executive Session. It would have been preferable for all parties involved, and particularly would be in the public's interest. However, honest differences of opinion prevented this goal from being achieved.

OTHER DEMANDS All issues agreed to earlier in these negotiations are hereby re-affirmed as part of the successor Agreement. All other demands brought up in these negotiations which have not been agreed to, and not addressed in this Award, are considered to have been withdrawn.

Finally, the Chair expresses his appreciation to both parties, their spokesmen, and to Panel members for their efforts in resolving this dispute.

February 1, 1999
Buffalo, New York



SAMUEL CUGALJ
CHAIR AND PUBLIC PANEL MEMBER

cc: Richard A. Curreri, Director of Conciliation, PERB
Charles Leonard, Supervising Mediator, Buffalo PERB