

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD
INTEREST ARBITRATION PANEL

IN THE MATTER OF THE INTEREST ARBITRATION

- between-

CITY OF NORTH TONAWANDA PROFESSIONAL
FIREFIGHTERS, LOCAL 1333

- and -

CITY OF NORTH TONAWANDA
PERB CASE IA201-023;M201-162

FINAL AND BINDING
OPINION AND AWARD
OF TRIPARTITE
ARBITRATION PANEL

PUBLIC ARBITRATION PANEL MEMBERS

Miriam W. Winokur, Ph.D.
Neutral Member and Chairperson

Shawn P. Nickerson, Esq.
Employer Designated Member

Richard Kozak (Fire Fighter)
Union Designated Member

APPEARANCES

For the Union:

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For the City:

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INTRODUCTION

The City of North Tonawanda ("City" or "Employer") and the North Tonawanda Professional Firefighters Association Local 1333 ("Union", "Firefighters" or "Association") are parties to a Collective Bargaining Agreement ("Agreement" or "Contract") effective for the period January 1, 1999 through December 31, 2001, pending the negotiation of a successor Agreement (Joint Exhibit 1).¹ On or about February 14, 2001, the City's Common Council passed a resolution directing Fire Chief, David Rogge ("Rogge") "to do what is necessary to reduce overtime costs within his department, incurred because of manpower and equipment shortages, so that they remain within budgetary appropriations." (JX 2, p. 3) and pursuant to the resolution, Chief Rogge began closing fire companies on a regular basis if there was a shortage of manpower. On February 23, 2001, the Union served notice on the City that it wished to negotiate the impact of the fire company closings (JX 4). Absent a response to the Union's February 23, 2001 demand, by letter dated March 8, 2001, that included three written proposals, Local 1333 again asked to meet with the City to negotiate the impact of the closing (JX 5). On March 27, 2001, City Attorney Jeffrey Mis responded stating that the Union's proposals dealt with non mandatory subjects of negotiation (JX 6).

On April 4, 2001, the Union filed an Improper Practice ("IP") charge against the City (PERB Case U-22476) and on May 17, 2001, a conference regarding the charge was conducted by PERB Administrative Law Judge ("ALJ") Jean Doer. At the conference the City agreed to engage in impact negotiations and sessions regarding the three proposals were held on June 27 and 30, July 6 and 27, 2001, without agreement being reached by the Parties. On August 29, 2001, the Union filed a Declaration of Impasse (JX 7) and on October 1, 2001, the parties met with PERB Mediator Charles Leonard, but were unable to reach agreement. On October 22, 2001, Local 1333 filed a Petition for Compulsory Interest Arbitration (UX 11) with PERB, after which the City filed its Response and Petition for Declaratory Ruling (CX 1). On January 23, 2002, a conference was held with A.L.J. M. Lynn Fitzgerald during which the City and Local 1333 reached a Settlement Agreement (JX 8) wherein the Petition for Declaratory

¹ Hereafter exhibits submitted jointly will be referenced as JX, Union exhibits as UX and City exhibits as CX.

Ruling was withdrawn as well as Union's proposal No. 3. Pursuant to the Settlement Agreement the following Local 1333 proposals remain for the Panel's consideration if the Union's charge is sustained:

(1) A twenty (20%) percent across-the-board increase for all bargaining unit employees until such time as the City re-establishes traditional staffing levels.

(2) Each bargaining unit employee receive a five (5%) percent across-the-board increase for each bargaining unit employee who is not replaced within thirty (3) days of that employee leaving the Department.

On February 8, 2002, Miriam W. Winokur, Ph.D. was designated by PERB as the Chair of a Public Arbitration Panel, whose purpose was to make a just and reasonable determination regarding the matter in dispute between the City and the Union. To represent the parties as Panel members the City designated Shawn P. Nickerson, Esq., and the Union designated Firefighter Richard Kozak. Hearings were held in the City of North Tonawanda Municipal Building, North Tonawanda, New York, on May 9, 2002 and August 1, 2002, at which time the parties were provided with the opportunity to introduce evidence, offer the testimony of witnesses. When the Hearing concluded the Parties agreed to submit post-hearing Briefs on or before September 23, 2002. The City's Brief was timely filed, however, the Union's Brief was not submitted until November 12, 2002. The City replied to the Union's Brief by letter dated November 26, 2002. The City also forwarded a copy of a study of the Department that had been prepared by Carroll Buracker and Associates, Inc., which had been received by the City subsequent to submitting its Brief to the Arbitrator. The Union responded to same under date of December 13, 2002, and the Record was closed upon receipt by the Arbitrator of the Union's response.

APPLICABLE STATUTORY PROVISION

Section 209.4

(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 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 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.

(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 agreement 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.

ISSUE

At the Hearing the Parties agreed that the issue before the Panel is:

Whether the City's actions in reducing manpower and/or closing fire companies impacted the Union employees, and if so, what is the remedy?

BACKGROUND

The City of North Tonawanda Fire Department ("Department") is situated in the Southwest sector of Niagara County with a land area of 10.5 square miles. The City maintains its own water supply and distribution system as well as sanitary sewer collection treatment and disposal facilities. Electricity and natural gas are supplied throughout the City by Niagara Mohawk Power Corporation and National Fuel Gas Distribution Corp., respectively. Police protection is provided by the City's Police Department and Fire protection is provided by the City's professional Fire Department and Volunteer fire companies. Truck 2 was closed by the City on March 1, 2001 and Engine 2 was closed November 1, 2001 (Union Brief, p. 9).

The North Tonawanda Fire Department ("Department") consists of a Fire Chief, who is not a member of the bargaining unit, Assistant Fire Chiefs, Fire Captains, and Fire Fighter/Drivers (JX 9a-9d). Presently there are four engine companies: (engine companies 4, 5, 6, 7); one truck company (truck

company 1); and one rescue company. Prior to January 1, 1999, the Department consisted of five engine companies: engine companies 2, 4, 5, 6, 7; two truck companies: trucks 1 and 2, and one rescue company. When there were five engine companies, each company had initial, primary responsibility for one of five sectors of the City (UX 10b). With the reduction to four engine companies, each company has initial, primary responsibility for one of four sectors of the City (UX 10c). The geographical area now initially and primarily served by the remaining four companies has increased and the same increase in geographical sector served also holds true for the truck company. When there were two truck companies, each truck company had initial, primary responsibility for one-half of the City (UX 10a), now the sole remaining truck company has responsibility for the entire City.

Assistant Chief Malone ("Malone") reported during his testimony that the Department is divided into four platoons, the first and third working the same days as the second and fourth platoons; that the Department works an eight day rotational cycle consisting of two ten hour days on; followed by two ten hour days off; followed by two fourteen hour nights on; followed by two fourteen hour nights off; with the cycle repeating; that currently there is no captain for the first, third, and fourth platoons (JX 11b) and the Fire Prevention Captain position is also vacant. Information supplied by the Union established that the type of fire alarm call dictates the response; that there are essentially four types of calls and responses that can be categorized as First aid calls, still alarms, box alarms, and multiple alarms; that according to Department protocol, First aid /EMS alarms, result in dispatch of the closest engine or truck company, the rescue company, and assistant chief; that still alarms, such as a car fire, dumpster fire, gas or rubbish fires, have the same responses, as for a first aid/EMS call.

The Union also reports that as a result of the closings, each engine and truck company must respond to more calls and response to more calls because of the larger geographical area now served, which necessarily increases the work load; that the same increase in work load per engine or truck company is true for still alarms due to the larger geographic area served. The response for a box alarm is three (3) engine companies, the remaining truck company, the rescue company, and assistant chief; that as with the earlier referenced alarms, box alarms result in a greater work load since the responding engine companies are the three closest and the remaining truck company services the entire

City. For multiple alarms, the only remaining engine company is dispatched, reserve apparatus, if available, is dispatched and mutual aid is sometimes required.

The discussion and opinion which follows summarizes the respective positions of the Parties and specifies the reasons for the Award by the Panel majority.

THE PARTIES POSITIONS

THE UNION

The Union submits that while responses for calendar year 2001 were almost the same as for calendar year 2000, the total fire loss for calendar year 2001 was more than twice that for calendar year 2000 (JX 12); that lost work time due to injuries increased; that in 1999 there were 11 injuries with lost days, in 2000 there were 73, and in 2001, there were 78. The Union points out that according to the organizational charts for 1995, 1996 and 1997, in 1995, there were 56 sworn members of the Department, including the Fire Chief; in 1996 there were 52 sworn members, in 1997 there were 51 sworn members, and as of June 13, 2002, there were 44 sworn members (CX 2). The Union alleges that the number of fire responses has remained relatively constant since 1995 (JX 12) but that less bargaining unit men are performing the work previously performed by eight additional men and, in relative terms, each bargaining unit member is performing an additional 15% of the work.

The Union also observes (Brief, pp. 10-11) that fire fighting is a hazardous occupation and that firefighters perform manual work of a hazardous nature in fighting fires, involving performing tasks under emergency conditions protecting life and property and can also involve physical exertion under handicap of smoke, extreme heat, gasses, and cramped surroundings and because of the work, work-related injuries are common. The Union reports that on a national basis the number of firefighters killed or injured on the job is four times the average for workers in private industry and the frequency of firefighter injuries nationwide (more than one out of every three) has remained constant, but that the severity of the injuries has increased; that based on the accumulated statistical data provided from the chiefs nationwide, the IAFF, has concluded that efforts by public officials to cut costs by reducing

staffing levels have, in many cases, placed firefighters in jeopardy and that fire fighting remains one of the most dangerous occupations. The Union contends that "...There is a direct relationship between staffing levels, public safety, and protection of property. The key element of the staffing issue is safety. Firefighter staffing not only directly affects delivery of fire protection service, but the safety of those who deliver the service or those who receive the service. It is important to note that if the community expects continued aggressive attacks on fires, it must provide the department with at least the minimum resources required to meet the community's expectations. To do less forces firefighters to accept a level of risk to their own health and safety that the community at large finds unacceptable for itself." (Brief, pp. 12-13)

According to the Union, the Department has paid firefighters, but generally relies on volunteers to assist in fire suppression and perhaps rescue. The Union contends that the safety of bargaining unit members has always been at risk because volunteers are relied upon to appear at the fire scene, rather than the Department adhering to minimum staffing guidelines. The Union also contends that volunteers do not receive the annual training required of paid firefighters, nor do they complete the same academy; that while volunteers may be heroic, they are not a substitute for paid firefighters and the absence of available paid firefighters at working fires seriously affects the health and safety of the current bargaining unit members.

The Union asserts that since the City has been reducing the number of sworn firefighters, at a time when there are fewer volunteers, it expects its paid firefighters and command officers to assume greater amounts of work. The Union maintains that the staffing levels of the department are dangerously low; that being short three captains and nine firefighters (in March 2001) promotes neither the interests of the City or the Association and precludes basic positions being filled, such as the position of fire prevention officer, who inspected buildings to ensure compliance with fire codes and conducted classes within the City on fire safety and prevention (UX 2, p.2). The Union submits (per UX 2) that a fire in which three engine companies respond with the truck company and the rescue company results in only five paid firefighters; that unless the second platoon is working, there is no fire captain

(who supervises the inside crews), only the assistant chief; and that nationally recognized guidelines for such a response, calls for four firefighters for every engine company and five for every responding truck company. The Union maintains that simple math demonstrates the severity of the situation.

The Union submits that the United States Department of Labor's Two-in/Two-out standard is fully applicable to the City; that the standard requires that a minimum of two firefighters work as a team inside the structure and that a minimum of two firefighters be on standby outside the structure to, if necessary, rescue the firefighters inside the structure; that at a minimum, the regulations require that there be four firefighters - two working as a team in the interior of the structural fire and two outside the structure for assistance or rescue and that the two outside individuals must not only be properly equipped and trained, but must be stationed before any team(s) of firefighters enter the structural fire (UX 1). The Union argues that given manpower levels with the City's Department, this cannot always be accomplished until all the engine companies and truck company have arrived at the fire scene (Brief p. 18).

Finally, the Union argues that based on the Taylor Law criteria, the Panel must Award additional monetary compensation to the negotiating unit members and to that end, has proposed a retroactive twenty (20%) percent across-the-board increase, as well as a future five (5%) increase based on each vacant position not hereinafter timely filled. The Union notes that the Panel is to determine the reasonableness of the Union's proposals and, if necessary, to render its determination as to what is a just and reasonable award and the Union contends that in doing so, the Panel ought to be cognizant of the Mayor's announcement that he intends to further reduce staffing and a just and reasonable award should address future cuts as well as the current understaffing.

THE CITY

I) The City maintains that despite the Union's opposition to the action it took on February 14, 2001, there was no substantial decrease in the number of firefighters between November 28, 2000, and May 6, 2002; that on November 28, 2000, not including the Fire Chief there were 42 paid firefighters

and officers in the Department (per Joint Exhibit IIA) and on May 6, 2002, there were 43 firefighters and officers within the Department (per Joint Exhibit IIB). The City also indicates that it has between 30 and 40 trained and certified volunteer firemen to assist the Union employees, therefore, it actually increased its number of firefighters from the period before the Common Council ordered the Chief to reduce overtime and the time of the first hearing in this matter.

The City contends with regard to two prior Interest Arbitration Awards submitted by the Union to support their position, that both cases are contrary to the facts in the instant matter and, therefore, are inapplicable; that in the Matter of the City of Batavia and the International Association of Firefighters (UX 3), Batavia had actually reduced the number of firefighters from 32 to 28; and in the Matter of the City of Niagara Falls and the Niagara Falls Fire Department Command Officers Association (UX 4), the City of Niagara Falls had eliminated five (5) relief captain positions. The City also notes that Fire Chief David Rogge testified that the City of Niagara Falls does not have any volunteer firefighters to bolster its ranks and that no one testified regarding whether the City of Batavia has volunteer firefighters. The City observes that in any case, in both awards there was a reduction in the number of firefighters available for duty, which is clearly not the case in this matter, since there was no reduction in Union manpower and the City has a viable volunteer force to bolster the union firefighters.

II) The City notes that it appears that the gist of the Union's argument is that the City eliminated some fire equipment, but the City's position is that it has the prerogative to assign equipment. The City points out that Assistant Chief Barry Malone testified that Truck 1 was taken out of service on March 1, 2001, and Engine 2 was taken out of service on November 1, 2001, and that from February, 2001, until November 1, 2001, Engine 2 was not manned when there was insufficient manpower on a shift. The City also notes that during Chief Rogge's testimony, he agreed that Engine 2 should have been taken out of service, as it is easier to cover Engine 2's territory with the remaining fire companies. The City cites Assistant Chief Malone's testimony that prior to being put out of service, Engine 2 had responded to approximately 600 - 700 calls per year and that now Engine 4 has become the

busiest engine and the City asserts that it appears that the Chief's action in eliminating Engine 2 had just redistributed the amount of work that must be performed by other engine companies. The City points out that Assistant Chief Malone testified that the City still has three (3) engines responding to each alarm of fire that is a box alarm and that there is only one engine in reserve when a box alarm is answered, but the City maintains that the amount of reserve protection should be a management right, not a mandatory subject of negotiation. The City also notes that Assistant Chief Malone testified that the City's response time still remains under three (3) minutes, therefore, the changes instituted by Chief Rogge are not detrimental to either the residents of the City or the Union.

III) The City maintains that its actions had minimal impact on the Union employees, noting in response to the exhibits introduced by the Union to demonstrate that there is a serious safety problem, that Assistant Chief Malone testified that NFPA 1710 would require sixteen (16) firefighters before anyone can enter a burning structure (per UX 7 and UX 8), but on cross examination he testified that standard does not apply to the City because it is not a completely paid department. The City points out that Assistant Chief Malone also testified that the OSHA requirement requires that there be at least two (2) firefighters inside a burning structure that have visual or voice contact and two (2) firefighters outside the burning structure with at least one (1) firefighter in contact with the firefighters inside the structure and a second firefighter available to assist in case of emergency (See Union Exhibit 1). However, on cross examination he acknowledged that the City is in compliance with this OSHA requirement and he also stated that because of this OSHA standard, the Union is safer today than it was in 1999, when one person was permitted to enter a burning structure. The City also references his testimony that at a fire scene he must rely on off-duty union personnel and volunteer firefighters, but the City argues that this has always been the case, as the City has six volunteer fire companies.

The City notes that Chief Rogge testified that Assistant Chief Gregory Frank is the department's Training Officer and, as such, is in charge of training both paid union firefighters and the volunteer firefighters; that each volunteer must complete the basic firefighter course; that Assistant Chief Frank also teaches 15 additional courses that are available to the volunteer firefighters; that

Assistant Chief Malone testified that he knows that the volunteers do receive regular training and that Assistant Chief Frank certifies that a volunteer has completed a course of training and that there are between 30 and 40 certified volunteer firemen that regularly respond to fires; that with such a large number of volunteer firefighters available, the actions of the City had minimal, if any, impact on the fire department.

IV) In conclusion, the City believes that there was no reduction in manpower after the February 14, 2001 date listed in the Declaration of Impasse (Joint Exhibit 7) and that between November 28, 2002 and May 6, 2002 the number of paid firefighters actually increased. The City maintains that it has the right to determine the number of vehicles used to protect it and also has the right to determine where the vehicles will be situated. The City contends that in the instant case, it merely redistributed the number of calls that each engine company must respond to and testimony has shown that response time was not lengthened by these reassignments and because of the City's active volunteer fire program the elimination of one fire engine had no impact on the paid union firefighters, consequently, the City believes that the panel should determine that the reduction of one engine company and one truck company did not impact the fire service in the City of North Tonawanda.

FINDINGS OF FACT

The Union asserts that there has been a 15% reduction in number of sworn members in the unit since 1995 and that the two proposals it has put forth deal with the impact of said reduction. It claims that number of fire responses has remained relatively constant since 1995 (JX 12) but less bargaining unit men are performing the work previously performed by eight additional men and in relative terms, each bargaining unit member is performing an additional 15% of the work. The Union submitted organizational charts for 1995, 1996 and 1997 (UX 2) to support that claim.

The Union's proposals seek to have staffing levels returned to those existing in 1995. The Panel Chair notes that the trigger for the instant charge was the City's placing the engine company out of service in February 2001. The Union's demand for the City to negotiate over the impact of the closings

was served on the City on February 23, 2001, shortly after Engine 2 and Truck 2 were placed out of service. The Union did not raise the issue of reduction of manpower at any time until it filed the Declaration of Impasse on August 29, 2001 (JX 7). The Panel's responsibility is to determine the impact of the City's action when it took the Company out of service in February 2001, and not the impact of the reduction in manpower since 1995.

The Union has the burden to prove the charge of impact and to meet that burden it has contended that as manpower in the Department has decreased and number of calls per unit member have increased (per JX 10a - JX 10e), injuries to firefighters, as well as property damage have increased. Evidence submitted (JX 10d and JX 10e) fails to support the Union's claim that work days lost due to injuries increased from 73 in 2000 to 78 in 2001 and that the increase was caused by placing Engine #2 and Truck 2 out of service. In Calendar Year 2000 there were 73 full days away from work by paid Firefighters because of injuries (JX 10d). Sixty eight of the total number of days were attributed to an Assistant Chief who had surgery on his right arm and shoulder and the rest of the injuries were experienced by seven paid Firefighters, two of whom were responsible for the five additional days and five others who lost no work days due to their injuries. In Calendar Year 2001, when the Company was placed out of service, three Assistant Chiefs and four paid Firefighters were injured. A total of 70 days was reported away from work caused by injuries and of the total, 38 days were attributed to the Assistant Chiefs and the balance of 32 days was attributed to two of the four Firefighters (JX 10e). Although the totals create the impression that injuries among the Firefighters had increased since the engine company was placed out of service in February 2001, there is actually little difference in number of injuries between 2000 and 2001 and more firefighters were injured in 2000 than there were in 2001.

With regard to number of responses experienced, during cross-examination Assistant Chief Malone testified that Engine 2 had taken between 600 and 700 calls annually when it was in service and that Engine 4 is now the busiest company in the City and it was his opinion that calls for Engine 4 would be close to one thousand by the end of the year. However information in Chief Rogge's 2001 Annual Report (UX 9d) indicates that even with the increased number of calls that were expected,

there were 2349 responses in 2001, which was less than the 2382 reported for 2000. Further, Union Exhibits 10b and 10c indicate that Company 2 had been responsible for the smallest geographical area when Engine 2 was closed was merged with Engine 4, its neighboring Company. As confirmed by the Union, the City did not reduce the number of firefighters as a result of the closing, but instead transferred them to fill vacancies in other parts of the Department, so at that time there was no further reduction in the number of firefighters. Assistant Chief Malone also testified that since the change, there had been no change in the number of vehicles responding to a call.

The Union cited NFPA 1710 in detail to underscore how the impact of the City's action resulted in a serious safety problem in the City, but Assistant Chief Malone testified that NFPA 1710 does not apply to North Tonawanda because the Department is not a completely paid department. As regards the Union's concern about the Two-in/Two-out OSHA standard (UX 1), Assistant Chief Malone testified that presently this objective is being accomplished because he waits until he has sufficient manpower to achieve it. He also stated that the City is in compliance with the OSHA requirement and because of the OSHA standard, the Union is safer than it was in 1999, when a single person was permitted to enter a burning structure.

The Union's claim that property damage has increased since Engine 2 and Truck 2 were placed out of service, is also not supported by the instant record, which does not contain conclusive proof that the dollar increase in property loss is attributable to closing the company. The data provided concerning property damage due to fire loss (JX 12) indicates that while the dollar amount increased from \$507,000 in 2000 to \$1,138,865 in 2001, there was no evidence establishing what might have contributed to the increased loss, something which could have resulted from numerous causes, not just the closing of the engine company. In fact, during his testimony, Chief Rogge opined that the increase could have been partly caused by the lack of a fifth pumper being in service, and he reported in his 2001 Annual Report (UX 9d) that a contract had been signed in November 2001 for construction and purchase of one new fire pumper to take the place of an older 1970's pumper.

The Union has argued with regard to the city's reliance on volunteers, that the volunteers do not receive the annual training required of paid firefighters, nor do they complete the same academy; that while volunteers may be heroic, they are not a substitute for paid firefighters and the absence of available paid firefighters at working fires seriously affects the health and safety of the current bargaining unit members. The Union has alleged that at a time when there are fewer volunteers, the City expects its paid firefighters and command officers to assume greater amounts of work, since it has been reducing the number of sworn firefighters.

Assistant Chief Malone testified that the volunteers do receive regular training and that Assistant Chief Frank certifies that a volunteer has completed a course of training; that there are between 30 and 40 certified volunteer firemen that regularly respond to fires; that with such a large number of volunteer firefighters available, the actions of the City had minimal, if any, impact on the fire department. Chief Rogge testified that Assistant Chief Gregory Frank is the Department's Training Officer and trains both paid union firefighters and the volunteers and that each volunteer must complete the basic firefighter course (which the Union has complained is not as comprehensive as the training for the paid firefighters). Notwithstanding the Union's complaint, it did not supply any evidence that certified volunteers are not performing satisfactorily.

OPINION

Impact negotiation is a way for employees to recoup losses caused by an employer's action, but by a preponderance of proof the Union has to show an impact sufficient to justify the proposals it has submitted to the City. The evidence submitted by the Union does not support its argument that with the reduction in number of available bargaining unit firefighters, they have experienced additional injuries and also that there has been a higher loss of property. Analysis of the information supplied by the Union revealed that fewer firefighters were injured in 2000 (7) than in 2001 (4) and fewer days actually lost in Calendar Year 2001, than there were in 2000. The Union also claimed that the key element of the staffing issue is safety and that the Two-in/Two-out OSHA standard (UX 1) could not always be accomplished, nonetheless, Assistant Chief Malone's unrefuted testimony indicated that the

standard was presently being met. Concerns regarding property losses which can lead to such things as loss of revenue, as well as concerns about the safety and well-being of its employees and North Tonawanda residents, are matters for which the City has the responsibility to consider and resolve.

The City asserts that the Union did not present testimony or evidence at the instant hearing to show that staffing levels have decreased at fire scenes since Engine 2 was closed, pointing out that excluding the Fire Chief, in November 28, 2000, there were 42 firefighters and officers in the Department (JX 11a) and in May 2002, there were 43 firefighters and officers within the Department (JX 11b). The Panel Chair also takes notice that in Chief Rogge's 2001 Annual Report, he noted that on July 30, 2001, four new firefighters had started training as Firefighter/Fire Drivers and were ready to go on shift early in 2002 (UX 9d). The fact that the City had added four new firefighters confirms that it is making an effort to increase staffing levels and serves to weaken the Union's argument that the City has not addressed reductions in staff.

The Union also contended that although the Department has paid firefighters, instead of adhering to minimum staffing guidelines it generally relies on volunteers to assist in fire suppression and possibly rescue, so that the safety of bargaining unit members is at risk. The instant record concerning injuries indicates that there are volunteers who have been injured each year, which confirms the City's contention that they do provide assistance at fire scenes (JX 10a-JX 10b). While the Panel Chair does not suggest that volunteers can or should be relied upon in lieu of paid firefighters, the evidence does support the claims by the City that they are available. It is the Panel Chair's opinion that the safe and efficient functioning of the Department are matters that have to concern the City, which is subject to the consequences of decisions made about equipment and manpower, if those decisions ultimately affect the safety and/or well-being of Firefighters and City residents as well as property.

During the instant hearing the Union submitted prior Interest Arbitration Awards issued for Niagara Falls (UX 4) and Batavia (UX 3), as well as a recent Decision issued in Jamestown (included with their post hearing Brief). The issue in those awards addressed staff reductions in paid fire departments. Having reviewed them, I agree with the City that in most respects they are not

applicable to North Tonawanda, because its Department is a combined paid/volunteer department, whereas Niagara Falls, Batavia, and Jamestown have fully paid fire departments and do not use volunteers (11/26/02 Reply Brief). According to the City, North Tonawanda never had a fully paid fire department, therefore, accurate comparisons cannot be made.

Subsequent to its submission of a Post Hearing Brief, the City forwarded a copy of a study of the Department by Carroll Buracker and Associates, Inc., ("Study") that was prepared with the cooperation of City officials, the North Tonawanda Fire Department including Union and volunteers (Fire Study, page "a"). The Study confirmed that the Department was a combined paid firefighter/volunteer department and while emphasizing the use of volunteers, it did not offer insights for the purpose of responding to the instant Issue because its conclusions were speculative and projected long range solutions, not immediately attainable.

Impact bargaining provides those employees who believe they are affected by an employer's change to terms and conditions of employment with an opportunity to address any negative impact caused by the change. The Union's emphasis has been about safety of the firefighters and the remedy sought for any impact resulting from the City's action is financial, leaving to the Panel's discretion to arrive at an appropriate monetary value for such impact, if it was determined such impact existed. The Union's proposals ask that the City provide all bargaining unit employees with a twenty percent across-the-board increase until such time as traditional staffing levels are re-established and also that each bargaining unit employee receive a five percent across-the-board increase for each unit employee who is not replaced within thirty days of that employee leaving the Department. The Union addressed concerns about safety, but did not establish how the monetary compensation it is proposing would eliminate injuries or contribute to the safety of the bargaining unit members. Neither did the Union provide a rationale for how the proposed compensation would address problems it claims resulted from removing Engine and Truck 2 from service.

After a comprehensive analysis of the instant record the Panel Chair is not persuaded the Union established by a preponderance of evidence that the City's action in closing the company had a

substantial impact on the Firefighters and there is no compelling proof that the Union's proposals for compensation would alleviate any impact caused by taking Engine 2 and Truck 2 out of service. For the reasons stated in the foregoing discussion, a majority of the Panel finds that such an impact has not been established by the Union, consequently, the Union's charge cannot be sustained.

AWARD

With regard to the Issue, the testimony and evidence do not support the North Tonawanda Professional Firefighters charge that the City's actions in reducing manpower and/or closing fire companies impacted the Union employees.

Local 1333 proposals for 1) a twenty (20%) percent across-the-board increase for all bargaining unit employees until such time as the City re-establishes traditional staffing levels, and 2) that each bargaining unit employee receive a five (5%) percent across-the-board increase for each employee who is not replaced within thirty (3) days of that employee leaving the Department are denied.

Respectfully submitted

Date:

Miriam W. Winokur, Ph.D.

Miriam W. Winokur, Ph.D.
Public Panel Member and Chairperson

STATE OF NEW YORK)
COUNTY OF *ERIE*) SS

On this *10* day of *April*, 2003, before me personally came and appeared MIRIAM W. WINOKUR, to me known and known to me to be the individual described in and who executed the foregoing instrument and she acknowledged to me that she executed the same.

Douglas L. Winokur

Notary Public

**DOUGLAS L. WINOKUR
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN ERIE COUNTY
MY COMMISSION EXPIRES DECEMBER 31, 20 *06***

I (concur) (do not concur) with the above Award

Date:

Richard Kozak, Firefighter
Employee Organization Panel Member

STATE OF NEW YORK)
COUNTY OF) SS

On this _____ day of _____, 2003, before me personally came and appeared RICHARD KOZAK, 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.

Notary Public

I (concur) (do not concur) with the above Award

Date: April 15, 2003

Shawn P. Nickerson, Esq.
Employer Panel Member

STATE OF NEW YORK)
COUNTY OF) SS

On this 15th day of April, 2003, before me personally came and appeared SHAWN P. NICKERSON, ESQ, 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.

Notary Public

FAITH E. MASON
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN NIAGARA COUNTY
MY COMMISSION EXPIRES 7-1-03

I (concur) (do not concur) with the above Award

Date: 5-30-2003

Richard Kozak
Richard Kozak, Firefighter
Employee Organization Panel Member

STATE OF NEW YORK)
COUNTY OF) SS

On this 30th day of May, 2003, before me personally came and appeared RICHARD KOZAK, 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.

CAROL A. PAWLIK
Notary Public, State of New York
No. 01PA6C45936
Qualified in Niagara County
Commission Expires Aug. 07, 2006

Carol A. Pawlik
Notary Public

I (concur) (do not concur) with the above Award

Date:

Shawn P. Nickerson, Esq.
Employer Panel Member

STATE OF NEW YORK)
COUNTY OF) SS

On this _____ day of _____, 2003, before me personally came and appeared SHAWN P. NICKERSON, ESQ, 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.

Notary Public