

NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Interest Arbitration Between  
The CITY OF NIAGARA FALLS, NEW YORK (FIRE DEPARTMENT),  
Employer,  
-and-  
THE NIAGARA FALLS FIRE DEPARTMENT OFFICERS  
ASSOCIATION,  
Union.

OPINION

AND

AWARD

PERB CASE NO.

IA2009-009

M2008-341

Before the following Public Arbitration Panel:

Michael S. Lewandowski  
Chairman

Gregory Colangelo  
Public Employee Organization Panel Member

Richard Rotella, Esq.  
Public Employer Panel Member

Appearances: Christopher M. Mazur, Esq.  
Deputy Corporation Counsel  
For the City

W. James Schwann, Esq.  
For the Association

On or about June 17, 2009, the Niagara Falls Fire  
Department Officers' Association ("Union") filed a petition for  
compulsory interest arbitration with the New York State Public

Employment Relations Board ("PERB"). The City of Niagara Falls, New York ("City") responded to the petition on July 1, 2009. The City and the Union had reached impasse in their negotiations for a successor Agreement to the Collective Bargaining Agreement ("Agreement") between the parties that expired on December 31, 2007. The unit is composed of 45 members holding the title of Fire Captain or Battalion Chief.

In accordance with Section 209.4 of the Civil Service Law, the undersigned were designated as the Public Arbitration Panel members by letter dated July 30, 2009 from the New York State Public Employments Relations Board ("PERB"). The panel met and conducted a hearing in the City of Niagara Falls, New York on December 1, 2009 and December 9, 2009. The panel held an Executive Session on May 12, 2010.

At the hearing, the parties were afforded a full opportunity to present relevant evidence in support of their positions. Each presented witnesses for examination and cross-examination and documentary evidence including data collected concerning police departments that they considered to be comparable to that of the City.

The content of this opinion and award reflects the results of consideration of the evidence presented against the criteria contained in the Civil Service Law.

Specifically considered were the interests and welfare of the public and the financial ability of the City to pay any salary increase or benefit increases awarded; comparable wages, hours and conditions of employment provided employees involved in similar work or requiring similar skills (fire officers); comparison of peculiarities in regard to other professions such as hazards, physical qualifications, educational qualifications, mental qualifications and job training and skills. The panel also considered the terms of the collective bargaining agreement negotiated between the parties in the past. The final disposition of the issues is the result of the deliberations of the panel. The parties were split what should be the outcome with respect to the individual issues reviewed by the panel. The award contains the outcome as voted on by a majority of panel members. The panel rejected the majority of proposed issues after the panel reached the recognition that the proposals could not be resolved by even a majority vote. The expectation of the panel is that these issues will either be addressed in future negotiations or withdrawn from consideration by the parties. In any event, the fate of these issues in the

future lies with the parties and not this panel.

The evidence presented by the parties was considered against the criteria set forth in the Law including but not limited to a comparison of wages, hours and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions; the interests and welfare of the public and the financial ability of the public employer to pay; the peculiarities in regard to other professions such as hazard, educational qualifications, training and skills and the terms of collective agreements negotiated between the parties in the past providing the compensation and fringe benefit package that currently exists for the bargaining unit members.

#### **DISCUSSION AND ANALYSIS**

After extensive review of the significant amount of evidence presented at the arbitration, the panel reached agreement on the Award that follows. The Award is a product of the consideration of all the factors specified in the Civil Service Law. It modifies terms and conditions of employment in a manner which benefits both the Union and the City.

**TERM.** The parties reached unanimous agreement on the term of the award. The term of this award shall be for a two year period commencing on January 1, 2008 and expiring on December 31, 2009.

**DIRECT COMPENSATION:** The Union proposed increasing wages six percent (6%) in each year of a two-year award. The City proposed no increase in base wages during this period but instead advanced a position that the members of this unit should be given a \$500.00 bonus payment in each year of the award period.

Any review of proposed salary increases should begin with a review of the employer's ability to pay. The panel received into evidence a significant amount of data addressing this issue. Both the data presented by the Union and the data presented by the City showed that the City had the ability to pay an increase in compensation, be it an increase in base wages as the Union proposes or a bonus payment as the City proposes; the parties differed only on the amount of increase/bonus to be awarded although the amount to be paid differed greatly. The data also differs significantly as to the financial condition of the

City. Each side vigorously asserted that its data represents the data upon which the panel should rely.

In the final analysis, the majority of the panel considered that the City's financial health is improving. On the positive side, the City saw an increase in its Ratio of Assets to Liabilities from a low in 2004 of 1.67:1 to a 2008 3.04:1 ratio. The data presented shows the City had \$57,990,000 in cash in 2008. A significant increase from prior years. The data also shows the City is relying less and less on the collection of real property tax revenue in that in 2006 the City obtained 37.1% of its total revenue from property taxes whereas in 2002, the City obtained 41.4% of its revenue from property taxes. The City actually lowered its property tax rates from that which were assessed in 2006. The Mayor's proposed budget for 2010 seeks a reduction in the non-homestead tax rate and a marginal increase in the homestead tax rate. Additionally, the City's contribution costs for pension plans decreased by \$596,274.00 in 2008 from the 2006 contribution. The Annual Financial Report for the year ending December 31, 2008 shows the general fund reported unreserved, undesignated fund balance is approximately 5% of the annual expenditures of the general fund, a healthy amount. Fund

balances for the period of 2006-2008 follow.

Year	Beginning Fund Balance	End of the Year Fund Balance
2006	\$ 6,310,968	\$15,090,022
2007	\$15,090,622	\$22,612,745
2008	\$22,612,745	\$25,623,507

While the City's financial health is improving the data also shows that there is reason to be cautious with regard to ability to pay here. The City 2008 Financial statements also show that the City (as well as every employer) needs to be concerned about the rising costs of health insurance. Additionally, the cost of employee pensions are expected to remain at levels high above the average for the past ten years. Additionally, one of the most concerning factors (if not the most concerning factor) when assessing the City's ability to pay is the fact that State aide revenues are currently in a state of flux with all indications pointing to a potential dramatic decrease in such aide. As this award is being written, the State is delaying payment and there is every reason to believe that the State budget impasse will continue. The future for State aide payment is bleak as compared to past years.

When taken together, the positives and the negatives indicate that an increase in compensation is permissible but not at the level sought by the Union. The next step for the panel to consider is what level increase is appropriate, if any, given the fiscal picture of the employer. An employer is not obligated to pay increases sought simply because it has the ability to pay. A review of comparable salaries and benefits must be made as it was here.

The majority of the panel considered the data presented with respect to compensation when compared to similar work performed for comparable employers justified the increases adopted by this panel.

Each party proposed numerous municipalities that it considered comparable employers. Five (5) cities were on both lists; Lockport, Troy, Binghamton, Utica and Schenectady. The following tables show the base wages for each of the comparables as compared to the Niagara Falls Fire Officers and the tables note the differences in compensation as well as the increases paid to fire officers employed by those municipalities for the period under review here.

Comparables	Base Wages
<b>Captains</b>	
Lockport 1/07	\$57,386.00
Troy 1/08	\$56,443.00
Binghamton 1/08	\$62,900.00
Utica 4/08	\$60,990.00
Schenectady 1/08	\$63,735.00
<b>Average</b>	\$60,290.80
Niagara Falls	\$56,270.00
Difference	\$4,020.80
% difference=	\$0.067
<b>Battalion Chiefs</b>	
Lockport 1/07	\$63,232.00
Troy 1/08	\$70,554.00
Binghamton 1/08	\$70,523.00
Utica 4/08	\$67,090.00
Schenectady 1/08	\$68,834.00
<b>Average</b>	\$68,046.60
Niagara Falls	\$63,433.00
Difference	\$4,613.60
% Difference=	\$0.068
<b>Contract Wage Increases for 2009</b>	
Troy	3.50%
Binghamton	3.50%
Utica	2.00%
Schenectady	4.00%
Average for 2009	3.25%

The data clearly shows that the fire officers in this unit are paid below their peers in comparable

municipalities. It also shows that average increase paid to those peers is less than what is adopted here. Among the many factors not contained in this raw data are differences in current contract benefits<sup>1</sup> and the fact that the wages shown and increases shown were enacted prior to the current financial situation involving the state budget as it affects state aide. I do note that the increases provided here do exceed the lowest increase shown in this data. The salary increase also exceeds the cost of living listed in the CPI, which was 2.3% for the one-year period ending March of 2010.

Significant weight was given to the fact that the Niagara Falls Police Captains' and Lieutenants' Association was recently awarded the same increases found appropriate here.

Considering all of the above, the panel determined the awarding of a 3% increase in base salaries in each year of the two-year award period should close this dispute.

Also, considering all of the above data, the panel has determined that it is appropriate to limit its award here only to those economic issues listed below. Each issue

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<sup>1</sup> While these factors were reviewed the tables do not show the impact of them.

addressed by this award is a direct cost issue. The other proposed issues would have either a direct economic cost or an indirect cost via a cost in operations. Insufficient evidence exists as to what those costs would be therefore all of the other issues are remanded to the parties for future negotiation having been rejected by this panel.

AWARD

SALARY AND OTHER COMPENSATION:

Effective January 1, 2008 – increase 3%

Effective January 1, 2009 – increase 3%

As a part of the increase in compensation package adopted by this panel, the panel approves an increase of \$500 in the uniform allowance effective January 1, 2008. Also approved is an increase in the longevity increments as follows; \$250 at 15 years; \$300 at 20 years; \$350 at 25 years and \$450 at 30 years.

I ~~concur~~/do not concur – Date

6/1/2010



Richard J. Rotella, Esq.  
Public Employer Member

I concur/~~do not concur~~ – Date

6/1/2010



Gregory Colangelo  
Public Employee  
Organization Member

**Health Insurance:**

The City proposed that new employees hired after the execution of this award, contribute (20%) towards the premium payments made by the City. The Union opposed the City proposal pointing to the need to submit such a proposal to the Labor Management Health Care Committee but also stating it opposed the creation of a two-tier benefit program. The recent award affecting the Police "Brass" contains a provision that "any new member of the bargaining unit previously required in another City unit to pay co-pay for his/her health insurance premium will be required to continue to pay said co-pay for the same. Any prior section that is in conflict with this provision is null and void with respect to co-pay." In consideration of rising health care cost and the financial data submitted during this review, the majority of this panel elected to approve the same language as contained in the police "brass" award regarding this issue.

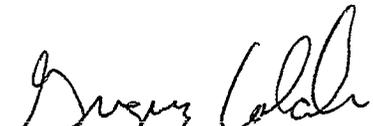
I concur ~~do not concur~~

- Date 6/1/2010

  
Richard J. Rotella, Esq.  
Public Employer Member

~~I concur~~ do not concur - Date

6/1/2010

  
Gregory Colangelo  
Public Employee  
Organization Member

The above provisions contain the entire content of this award.

**AFFIRMATION**

COUNTY OF ERIE )

STATE OF NEW YORK )

We, the public arbitration panel identified above, do hereby affirm upon our oath as Arbitrators that we are the individuals described in and who executed this instrument, which is our award.

Date: *May 25, 2010*

  
MICHAEL S. LEWANDOWSKI

Date: *6/1/2010*

  
GREGORY COLANGELO

Date: *6/1/2010*

  
RICHARD J. ROTELLA