

**STATE OF NEW YORK PUBLIC EMPLOYMENT RELATIONS BOARD
INTEREST ARBITRATION PANEL**

IN THE MATTER OF THE INTEREST ARBITRATION

Between

THE CITY OF OSWEGO, NEW YORK

And

**CITY OF OSWEGO FIREFIGHTERS ASSOCIATION,
IAFF LOCAL 2707**

**NYS PERB CASE #: IA2010-019
M2010-021**

OPINION

AND

AWARD

NYS PUBLIC EMPLOYMENT RELATIONS BOARD

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CONCILIATION

The Arbitration Panel members are:

Ira B. Lobel, Esq.
Public Panel Member and Chairperson

Elayne G. Gold, Esq., Roemer Wallens Gold & Mineaux, LLP
Employer Panel Member

Michael Cook, Oswego Firefighters Association
Union Panel Member

Appearances:

For the City of Albany:
Dionne A. Wheatley, Esq., Roemer Wallens Gold & Mineaux, LLP

For the City of Oswego Firefighters Association
Mimi C. Satter, Esq., Satter & Andrews, LLP

INTRODUCTION

Pursuant to the provisions contained in Section 209.4 of the Civil Service Law, the New York State Public Employment Relations Board, by letter dated December 14, 2010, designated the Chairperson, the Public Employer and Employee Organization Panel Members, to make a

just and reasonable determination of the outstanding issues in the collective bargaining dispute between the City of Oswego (hereinafter referred to as the "City") and the Oswego Firefighters Association, (hereinafter referred to as the "Union").

The collective bargaining agreement between the parties expired on December 31, 2009. After the parties failed to reach agreement in direct negotiations, impasse was declared and a mediator was appointed in April 2010. Settlement was not reached during mediation and the Union filed a Petition for Compulsory Interest Arbitration on or about September 13, 2010. The City filed a response shortly thereafter.

Ira B. Lobel was appointed Chairperson of the Arbitration Panel ("Panel"); Michael Cook and Elayne G. Gold were designated as panel representative for the Union and the City, respectively. The interest arbitration hearing was held on April 26, 2011, in Oswego, New York. Both parties were represented by counsel and introduced oral and written evidence, examined and cross-examined witnesses, and otherwise supported their respective positions on the outstanding issues before the Panel. The parties timely filed post hearing briefs on or about June 17, 2011.

The Panel met in executive session on July 6 and August 9, 2011, and deliberated on each of the outstanding issues. The Panel has carefully and fully considered all the data, exhibits, briefs and testimony of the sworn witnesses. The results of those deliberations are contained in this OPINION AND AWARD ("Award").

The Panel considered each item individually and the impact of each item upon the entire agreement and working relationship. This Award is the result of these deliberations. In arriving at the determination and Award contained herein, the Panel has considered the following statutory guidelines contained in Section 209.4 of the Statute:

- (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.

BACKGROUND REGARDING THE CITY OF OSWEGO

The City of Oswego has a year round population between 17,000 and 18,000 citizens. It is also home to the State University of New York at Oswego with approximately 8,300 students, a little over half of which live on campus in thirteen residence halls. In the adjoining town of Scriba, there are three nuclear power plants for which the Oswego Fire Department is a primary response agency in the event of a fire or emergency. Also located within the City limits are a steam station and a high water dam.

The City employs just over three hundred (300) individuals, including sixty-six (66) in the Fire Department. All of the uniformed firefighters are members of the bargaining unit except the Chief and the ambulance attendant.

Employees in the Fire Department (“Department”) are divided into four platoons, each of whom works an eight day cycle consisting of two 10 hour days, followed by two 14 hour night shifts, and four days off, whereupon the cycle repeats. The City tries to have 12 firefighters on duty at all times.

In addition to typical firefighting equipment, the Fire Department has five ambulances, four of which are staffed by uniformed firefighters pulled off the front line equipment as needed. Emergency medical services constituted more than 75% of the Department’s responses in 2010 (City Exhibit B) and generated over \$1,000,000 in revenues (City Exhibit K).¹

PARTIES’ POSITIONS AND DISCUSSION REGARDING STATUTORY CRITERIA

1. COMPARABILITY

Section 209.4 of the Civil Service Law requires that, in order to properly assess and determine the issues before it, the Panel must engage in a comparative analysis of terms and conditions with “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.”

The Union argued that the appropriate comparisons are fire departments in Fulton, Watertown, Auburn, Lockport, Rome, and Saratoga Springs. The City used Cortland, Fulton, Oneonta, Plattsburgh, and Watertown. Since both parties used Fulton and Watertown as reference points, both must be considered.

Both sides made excellent arguments as to why the Panel should utilize their proffered

¹ There are also significant costs related to these revenues. There was nothing in the record concerning the “net” revenue for ambulance services.

comparisons. The Union noted the population of the comparable cities it offered tended to be slightly larger than Oswego where the communities offered by the City tended to be slightly or significantly smaller. In terms of per capita, medium household, and medium family income, the cities cited by the Union were slightly wealthier while the municipalities identified by the City appear to be slightly poorer.

The City noted that three of its “comparable” communities are homes to colleges and have similar population size and demographics. The other two cities, Watertown and Fulton, were included in the Union comparisons.

Focusing on workforce size, the “comparable” cities suggested by the Union have departments closer in size to Oswego. It noted that Rome and Auburn are slightly larger with 83 and 74 employees, respectively; Saratoga and Lockport are slightly smaller with 54 and 50 employees, respectively (Union Exhibit 9). The “comparable” cities suggested by the City are smaller with 36 employees in Plattsburgh, 35 in Cortland, and 25 in Oneonta (City Exhibit W, at page 1). These three departments use both full time firefighters and volunteers.

The two cities referenced by both sides, Fulton and Watertown, have departments with 39 and 79 employees, respectively. Both appear to have been chosen because of location, size and wealth in the community.

Discussion. The Panel has carefully considered the parties’ positions regarding comparability. The conclusions drawn by this Panel regarding comparability have an impact on the final determination of this Panel. However, the determination of the appropriate comparable jurisdictions, as required by law, is not an exact science. The law does not require this panel to specifically state that the firefighters in this particular case must be compared to a specific jurisdiction or group of jurisdictions. The law requires that this panel compare wages and hours

of conditions of employment of the employees in the City of Oswego with other employees similarly situated. Any conclusions developed involve a multi-faceted analysis in which a variety of factors are considered.

In making comparisons, it is impossible to conclude that any city, or group of cities, is so similar that a direct comparison should be made. Each city cited by the parties has a basis for a valid comparison; none of the cities are so close that an exact correlation can be made. For example, larger and wealthier cities normally pay better than smaller or poorer jurisdictions. This could mitigate against direct comparisons with the cities proffered by both parties; all are at least 20% larger or 20% smaller in population. All are relevant; none can be conclusive. Similarly, the presence of a college within the community can serve to buttress the comparability of a number of the communities cited by the City, but due to the variety of size of the community, size of the workforce, and the "volunteer" component present in the fire department of these communities,² a precise comparison is not appropriate.

One factor differentiating Oswego from any of the cities cited by either side is the five ambulances it maintains and the full transport services it provides. In the cities cited by the Union, only Lockport provides full transport services (Union Exhibit 9). In the cities cited by the City, only Oneonta and Plattsburgh have "EMS"; there is no explanation regarding the extent of this service (City Exhibit W at page 2).³

None of the other cities cited appear to provide any similar services, either in depth or breadth. This means that the City requires a higher level of training and expertise from its

² The volunteer nature of these work forces will most likely tend to keep the wage and benefit package lower when compared to cities with only full time personnel. However, there is no evidence to demonstrate exactly how and to what extent this differential may exist.

³ All three of the other cities (Cortland, Fulton and Oneonta) in the comparison require EMT training. EMT is not as detailed or sophisticated as EMS training. There is no indication regarding the extent of the services provided.

applicants and obligates its staff to maintain certain certificates as a condition of employment. In recognition of the services offered in Oswego, all new hires since 1997 have been required to have at least a Critical Care Technician ("CCT") certification. There are stipends awarded for the various levels of training obtained (see CBA, [Joint 1, Tab 3, Section 24.4]). The ambulance services also generate over \$1 million annually from the performance of such services.

A requirement for greater training usually warrants a higher wage. Oswego firefighters as a group have a greater degree of emergency medical training than any of the firefighters in any of the cities proffered by either side. This does not mean, however, that automatically Oswego firefighters should be the highest paid.⁴ The City has more employees, in part, because it provides extension emergency medical services. These additional employees also have added costs. It could be argued whether the additional employees and lower wages are beneficial to both the Cities and employees. This discussion, however, is appropriate for another forum.

In addition, other variables must be included, particularly regarding the state of the economy generally and in Oswego specifically. This analysis must include the recent settlements in both the AFSCME and SEIU units. While neither is conclusive, the reality of these settlements must be factored into any decision made by this panel. The Panel has also examined other recent settlements and tentative agreements, including those involving State employees, municipal employees in surrounding towns, and private employees. There is no question that there has been a significant downward trend in wage settlements in recent months — from the time the petition for arbitration was filed, from the time the hearing was held, and from

⁴ It is generally conceded that employees of municipal fire departments are better paid than employees of private ambulance service; these private ambulance services were not included in any comparative data. Both private ambulance services and municipal fire departments serve the same clientele.

the time the Panel has been making its deliberations. This trend must be factored into the Panel's decision making process.

Finally, it is inappropriate to focus only on salaries. Total compensation must be considered and must include actual pay increases, the percentage wage increase, benefit changes, **and** the overall compensation package in other jurisdictions. To the fullest extent practical, the overall compensation package should include wages, benefits, and other forms of compensation (shift differential, longevity pay, clothing allowance, etc.) Each contract also can emphasize different aspects of the compensation package.⁵ Additionally, some of the benefits affect employees differently.⁶ It is necessary to examine average total compensation to analyze whether wages, hours, and conditions of employment are comparable.

Even taking all of this into account, the wages of the firefighters in the City are often below the average salaries (including fringe benefits) in comparable cities, regardless of whose comparable data is used. Having found wages to be low, the Panel must also evaluate the other factors set forth in the Taylor Law. The impact of these factors will be further identified in our discussion of the individual issues.

2. ABILITY TO PAY

Another factor to be considered is the "interests and welfare of the public and the financial ability of the public employer to pay." In the current economic climate facing all municipalities, this factor has become a particularly difficult one to evaluate. In many locations,

⁵ For example, one jurisdiction could emphasize starting salaries; another could stress the salaries for senior employees. Other jurisdictions could pay employees through a shift differential, longevity or clothing allowance. True comparisons must factor in all these variables.

⁶ For example, the value of the health insurance benefit can widely vary based on the need for single or family plan; longevity pay will benefit senior employees differently than junior employees.

revenue from the general tax levy (property tax) and sales tax is flat or declining. Oswego is no exception.

The operating budget for the Department for the last nine years has usually been in the \$4 million range.⁷ The year to year increases have been in a normal range for the last nine years, except for inordinately large increases in 2007 and 2008 (over 11% and over 35%, respectively). No evidence was submitted regarding the reasons for such increases; it is important to note that in 2009, the budget expenditures returned to slightly above 2006 levels (City Exhibit C).

The City has two major sources of revenue – the city tax levy and sales tax revenue. The city tax revenue has declined slightly in the last three years (City Exhibit F). The tax rate per \$1,000 has remained unchanged for the last two years. By charter, the City has a property tax cap of 5%; it is not clear at present the relationship of this limitation on the new 2% property tax cap recently passed by the New York State Legislature. Sales tax revenues are showing a small increase over the last two years; however, sales tax receipts are still \$2-3 million below sales tax receipts in the 2007-2009 period.

The City expressed significant concern regarding its fund balance. The City currently has a fund balance of \$2,216,864, well below the recommended 14% of budget and over \$700,000 below the balance in 2009 (City Exhibit D). The decline in the general fund over the last several years demonstrates that the City is facing extremely challenging financial conditions. These conditions must be carefully balanced with the need to maintain a well-trained and dedicated workforce. The City is also concerned regarding possible (and likely) losses in State Aid and its ability to find revenues to replace these losses.

⁷ In 2004, the first year reported, the expenditures were slightly below \$4 million. Fiscal year 2008 showed expenditures in excess of \$6 million. There was nothing in the record as to the reason for this expenditure "bubble."

Furthermore, there is significant public concern voiced with any tax increase, making it difficult for any increase in revenues from local taxes. Compounding this difficult political situation is uncertainty regarding the impact of the 2% property tax cap and the potential decline in State aid and other third party payments.

3. PECULARITIES OF THE PROFESSION

There is no doubt that firefighters are engaged in a dangerous profession. In a city such as Oswego, firefighters are encouraged to retain certifications for advanced and intermediate life support. These stipends contain positives and negatives for both sides. On the one hand, it allows additional training and income for many firefighters; on the other hand, there are additional costs and revenues for the City. The reality is that 75% of the calls taken by the Department are EMS related (City Exhibit B). Without such services, it is unlikely there would be the same number of employees or the additional costs and revenue related to the presence of these skilled employees. The Panel must consider this reality in making any determination.

4. PAST NEGOTIATIONS AND BARGAINING HISTORY

This is the first interest arbitration hearing between the parties since 1994. All previous agreements have been settled by the parties, often with the involvement of a mediator. Many of these wage settlements have been in the 2-3% range, with a small increase in the percentage contribution paid toward health insurance premiums. Retroactivity has always been part of previous settlements.

The Panel recognizes that the current wages and working conditions of the firefighters are the cumulative result of previously agreed upon collective bargaining agreements. For good or bad, the comparative position of the firefighters with similar employees in other cities is the

result of these collectively bargained agreements. The Panel must acknowledge and recognize that these agreements were arrived at for good and valid reasons, taking into account economic conditions and other settlements in the City and elsewhere.

DISCUSSION OF SPECIFIC PROPOSALS

Both sides have brought a significant number of proposals to be considered by the Panel, an indication of the status of bargaining between the parties before the declaration of impasse. Pending before the Panel are ten proposals submitted by each side, with additional counter proposals on a number of items. The Panel has carefully discussed and considered each and every item submitted to arbitration. For a number of issues, because of particular importance to one of the parties or its relationship to other issues, the Panel has specifically stated its rationale for leaving the language unchanged from the previous contract. Otherwise, any proposal not mentioned should remain as contained in the current contract. If the subject matter is not in the contract, the status quo should remain.

1. DIRECT ECONOMIC ITEMS – WAGES AND SIMILAR ITEMS

Article 24, Wages, (Union Proposal #11) and Retroactivity (City Proposal #12)

Article 25, Call Back Overtime (City Proposal #11)

Article 24.4, Stipends (City Proposal #13)

The Union proposed a 4% per year wage adjustment. It maintained that salaries in Oswego are significantly behind other fire departments in comparative cities. While acknowledging that starting salaries in Oswego are competitive, the Union maintained that wage disparity grows significantly throughout ones career. It noted that, by year two, the average salary in Oswego was \$6,858.00 less than the average second year the salary in Auburn, Fulton, Lockport, Rome, Saratoga Springs, and Watertown. This grows to an average differential of

\$13,016 by year 17.

The Union maintained that these discrepancies, albeit not as significant, also exist in the departments identified by the City. With the limited exception of Oneonta, these discrepancies exist in every rank and for every year in which data is provided.

The Union noted that Oswego firefighters are also underpaid relative to the Oswego police. It maintained there is no explanation for this differential.

Based on the foregoing, the Union argued that its members are entitled to a substantial wage increase for each year of the CBA. It argued that even an award of 4% per year will not bring them to parity with other comparable departments; it would, however, set them on the right course for future increases.

The City, on the other hand, maintained that it is a poor community that cannot afford additional expenses. The City noted that revenues from ambulance services are misleading since there are significant additional costs involved in providing such services. It also noted that the two other Union designated comparable communities (Saratoga Springs and Lockport) that provide EMT or ALS service are both more affluent and larger than Oswego. The City noted that Auburn, Fulton, and Watertown do not provide any comparable service.

The City emphasized that the City overtime budget was increasing rapidly and it simply cannot afford the increases proposed by the Union; any increase in wages necessitates an added cost to overtime expenditures. It noted its delicate financial situation and sought a pay freeze.

In addition, the City proposed several economic changes that will impact firefighters overall compensation. Proposal No. 13 sought to amend Section 24.2 "Stipends" by eliminating EMT/Paramedic stipends for anyone hired on or after January 1, 2010. It noted that the job description for firefighters requires EMT paramedic certification; since it is a qualification for

the position, employees should not be paid extra. The City also maintained that such a stipend is unusual and generous in relation to any of the comparable cities.

The City proposed, for this contract, that "retroactivity will be to the final date of actual contract ratification by all necessary parties" (City Proposal No. 12). It maintained that this provision is a cost saving measure and limits the City's back pay liability that may be incurred as a result of any wage increases granted by the Panel.

The City sought to reduce the call back to 3 hours from the current 4 hours (Article 23; City Proposal No. 11). It maintained that this would save the employer significant overtime costs and is consistent with call back hours provided by other comparable jurisdictions. It showed that two of its comparable jurisdictions provide three hours and two have a two hour minimum.

Panel Discussion and Decision

Any examination of wages must include an examination of the total economic package, including fringe benefits. The EMT/paramedic stipend given to employees is unusual when compared to firefighters in other jurisdictions. But it also must be acknowledged that the Oswego salaries are generally behind salaries in other jurisdictions, regardless of which cities are used as comparables. Even if one factors in the stipend given for EMT/Paramedic duty, the differential is still considerable. At some point, because a critical care tech certificate or higher is a requirement for all applicants (City Exh. A), the parties may want to incorporate this money into the salary and not list it as a separate item. However, at the present time, particularly in light of the salaries compared to other jurisdictions, there is no justification for its elimination.

The City also sought to eliminate retroactivity for this contract. Retroactivity is normally included as part of the resolution of any overall agreement; it is usually not meaningfully

discussed until the parties are close to agreement. Experienced labor relations professionals will agree that most of the time retroactivity is part of an overall agreement, unless there is a significant and unusual reason not to include retroactivity. In this contract, the Panel sees no justification not to include retroactivity for the 2011 fiscal year. (Based on the 2010 wage award, there is no retroactivity for that year.)

Finally, the call back of four (4) hours in this situation is higher than other call back provisions in the peer group. However, this can be considered partial compensation for wages that are generally below other comparable cities. On the basis of the overall package, there is no justification for change.

The discussion now must focus on the appropriate wage increase. In evaluating any increase, two aspects must be examined – the actual wages and recent percentage increases. As noted above, firefighters in the City have lower base wages in comparison to other communities. This may be mitigated, to some degree, by other benefits (such as the EMS stipend and call back provisions). There is also a historical basis for this disparity dating back a number of years. This historical reality should not be altered by this Panel, particularly in these economic times.

Examination of the percentage increases in the comparable cities shows increases in the 3% range every year since 2007, ranging from a low of 2% to a high of 3.5%. For those with settled contracts (Cortland, Fulton, Oneonta, and Watertown),⁸ the average increase is just over 3% in 2010 and 3.25% in 2011.⁹ Only Oswego and Plattsburgh are unsettled for 2010. Plattsburgh has been without a contract since 2008.

⁸ The Union did not show percentage increases in their exhibits; these numbers are based on City comparable submissions. However, an analysis of the wage increases contained in the Union's exhibits indicates similar percentage increase.

⁹ Only Fulton and Oneonta have settled contracts for 2011.

In most circumstances, comparable wage increases in other localities would warrant a similar percentage wage increase in Oswego; however, the overall economic situation makes a similar percentage increase inappropriate. The downturn in the economy is now clear and the likelihood of any significant change in the near future is dim.

The other contracts noted above were negotiated before the direction of the economy was clear. The State has imposed a 2% property tax hike. It is not clear the impact this will have on future revenue sources. The finances of the City are not in good shape. The ability to increase revenue is marginal, at best. Furthermore, the City has seen a decrease in the value of the general fund over the last several years, indicating a decrease in the overall balance sheets of the City. Lastly, and possibly most importantly, two other unions within the City have already agreed to a wage freeze for 2010. The Panel must evaluate not only other employees similarly situated (firefighters in other communities) but also other dissimilar employees within the same jurisdiction. Neither group is controlling. Both must be considered.

In this light, and combined with other items contained elsewhere in this report, the Arbitration Panel has unanimously agreed that the percentage increase should include a wage freeze for 2010 and a 2% across the board increase in 2011, retroactive to January 1, 2011. The panel agrees that this award addresses the realities of a difficult economic situation. A unanimous decision on wages is unusual, especially in difficult economic times. The "advocate" members of the Panel have worked with tremendous professionalism to balance the needs of the City with the goals of the Firefighters. All members of the Panel agree that, even in these times, it is highly unusual for an arbitration panel to award a wage freeze in any year.¹⁰ In recognition

¹⁰ The Panel has examined interest arbitration awards for the last two years and has not seen any awards that have awarded a wage freeze in any year of the contract.

of this reality, the Panel unanimously agrees to retain the status quo language on all of the other economic items discussed above.

Award

Wages: effective January 1, 2010, 0%
effective January 1, 2011, a 2% across the board wage increase.
All other items mentioned above shall remain as stated in the current contract.

2. ARTICLE 4, DISCIPLINARY ACTION (Union Proposal #23)

The contract provides for discipline to be handled pursuant to Section 75 of the Civil Service Law.

Position of the Union. The Union proposed binding arbitration as the final step of the grievance procedure and sought to incorporate applicable language from the Oswego Police contract into the Firefighters contract.

Position of the City. The City sought to maintain the current language.

Discussion. Many labor agreements throughout the country have binding arbitration for disciplinary matters. Most of the grievance procedures in the contracts cited by both sides contain binding arbitration. The Oswego police also have the right to arbitrate discipline. The City has provided no legitimate justification for why the police should have arbitration of discipline and the firefighters should not.

Section 75 of the Civil Service Law provides for a hearing office to make a recommendation concerning the discipline of an employee. Because this recommendation can be upheld or reversed by the City, there is a perception that the employee will not get a fair and independent review. This may affect possible settlement discussions regarding the proposed disciplinary action. While there is little empirical data that shows different results between the

final disciplines in Section 75 proceedings and arbitration proceedings, this perception is extremely important for both sides. Morale of employees can be enhanced when they believe they will get a fair and independent review on a disciplinary matter. This can have a positive impact on operations. The overwhelming standard throughout the country, among the comparable contracts proffered by each side, and the comparable contracts within the City makes disciplinary arbitration appropriate. The Firefighters contract will be modified to reflect the applicable language from the Oswego Police contract.

Award. The following language should be incorporated into the contract.

DISCIPLINE AND DISCHARGE

- A. An employee covered by this Agreement who has successfully completed his/her probationary period shall utilize the following procedure for disciplinary or discharge matters in lieu and in place of procedures specified in Sections 75, 76 and 77 of the Civil Service Law.
- B. Disciplinary action shall include, but is not limited to, written reprimands, suspension, demotion, discharge, fines or any combination thereof or other such penalty as may be proposed by the employer. A notice of such discipline shall be made in writing and served upon the employee with a copy to the Association President or other official designee. The specific acts for which discipline is being proposed and the penalty being proposed shall be specified in the notice. An employee must be served with a Notice of Discipline, either personally, or, if the employee is on leave of absence, then by certified mail, return receipt requested to the employee's last known residential address.
- C. Pending the outcome of the discipline, an employee may be suspended for up to thirty (30) calendar days without pay. In the event the City intends to suspend an employee without pay pending resolution of the charge, a pre-suspension "notice and opportunity to be heard" will be held to comply with existing case law, which "hearing" will involve the City, the affected employee, and representative of the Association President and the Association attorney if the employee so elects.
- D. (a) If the employee disagrees with the proposed disciplinary action, the Association must submit a Demand for Arbitration to PERB (with a copy to the Personnel Director and Fire Chief), within fifteen (15) working days of receipt of the Association's copy of the Notice of Discipline.

(b) Failure to submit a Demand for Arbitration within fifteen (15) working days of receipt of the Notice of Discipline will constitute acceptance of the proposed penalty by the employee and the matter will be settled in its entirety.

(c) Subject to a mutual written agreement between the employee and/or the Association and the City, the time limits herein above specified may be extended.

(d) The fees and expense of the arbitrator shall be divided equally between the City and the employee or Association, or between the city and the employee if the Association is not going to be representing the employee at the arbitration. In that event, the Association will prepare a writing indicating it will be permitting the employee to stand in its place with respect to Arbitration.

E. (a) Proposed disciplines can be resolved, at any stage of the disciplinary process (including, prior to filing of the Notice of Discipline). To that end, should either the chief, the employee, his Association representative and/or the Association attorney desire to initiate settlement talks, the employee, his representatives and the Association attorney shall have the equal right to be present during said discussion.

(b) In the event the employee chooses to **waive his right to representation**, the employee must sign a waiver (on a form that will be provided by the union), prior to the start of any settlement discussions.

(c) Regardless of the manner in which a proposed disciplinary matter is resolved, the resolution must be reduced to writing on notice to all parties, and shall be final and binding upon each party signing same.

F. No disciplinary action shall be commenced by the City more than eighteen (18) months after the occurrence of the alleged act(s) for which discipline is being considered; provided, however, that such limitation shall not apply where the act(s) would, if proved in a court of competent jurisdiction, constitute a crime.

G. In any disciplinary matter, the City may utilize an employee's entire, official personnel file. In that event, the employee will be so notified and have the opportunity to review the file before the arbitration hearing.

3. ARTICLE 9.1, FILLING OF VACANCIES (City Proposal #1)

The current contract contains the following provision:

Newly created and vacant positions will be filled from Civil Service lists within three (3) months after the same become available, if it is necessary that a position be filled temporarily until a list is propounded, the Fire Chief will post the position and eligible candidates will apply for any temporary job. The person filling the job temporarily will be paid at the rate that a permanent appointment would be paid.

All Civil Service promotional lists will remain in effect for one (1) year from the date of issuance, unless the list is exhausted prior to the termination of the one year period, subject to the approval of the Civil Service Commission.

Position of the City. The City proposed modifying the language to the following:

In the event that a position in the Fire Service becomes vacant, the City of Oswego, in its sole discretion, will determine whether said position will be filled. In the event the City determines that the position should be temporarily filled, until a final decision is made with respect to filling the vacancies and issues relating to same, the Fire Chief will post the position and eligible candidates may apply for this temporary job opening. Any individuals selected to fill the temporary job opening will be paid at the rate that a permanent appointment would have been paid. Furthermore, in the event the City determines that an existing vacancy should not be filled, no provision of this Article 9 shall be applicable.

Position of the Union. The Union sought to retain the current contract language.

Discussion. The City argued that this provision of the contract forces it to maintain minimum manning and that its proposal is necessary as a cost containment measure. The Union maintained that this section protects employees by insuring adequate staffing levels. The City countered that the Union provided no proof of this possibility.

The reality is that, in many contracts, staffing levels are a management right. The requirement that a vacancy must be filled would be an unusual provision in most contracts. However, this provision was the subject of an arbitration award in 2004 in which Arbitrator Thomas Maroney ruled that the language required that all vacancies be filled, regardless of rank. Accepting the City's position would, in effect, overturn and negate this ruling. Such a result

would be inappropriate in an interest arbitration award. It is up to the parties, through negotiations and trade-offs, to modify previously adjudicated portions of the contract.

Award. The current language shall remain unchanged.

4. ARTICLE 21, HEALTH INSURANCE PREMIUM CONTRIBUTION (Employer Proposal #8)

The Employer is seeking to increase the employee's premium contribution to 20% from its current 12%. It noted the rapid increases in the cost of health care and the adverse impact on the city. It also noted the 13% premium contribution paid by the City police and the 15-20% premium contributions paid by other employees in comparative cities.

The Union countered that an increase from 12% to 20% is particularly dramatic, especially when the City is proposing a wage freeze and decreases in other benefits. It further maintained that most of the employees in comparable cities are paying 15% of the premium.

Discussion. There are few items that are more explosive or controversial than the payment of health insurance. There is no question that the benefit for firefighters is marginally better than other employees in the City and other employees in comparable cities. There is also no question that the percentage paid for employees' health insurance premium contributions have gradually increased over the years. The Union acknowledged that it usually goes up by about ½% per year.

The Panel unanimously agreed that the health insurance premium should increase. There was considerable discussion regarding how much. Taking into account the modest increase in wages, particularly in comparison to the percentage currently in existence in comparable cities, and the wage differential with these cities, the Panel unanimously agreed that the premium contribution should increase to 14%, effective January 1, 2011. This would make the wage

increase and the health insurance premium increase effective on the same day. This should be a simple mathematical calculation that can be handled quickly by a computer or calculator and means that the back pay award of 2% will be offset by the value of the increase in the health insurance contribution.

The Panel agrees that the premium contribution should be slightly above other employees in the City – especially since no one has negotiated a contract for 2011. It would not be unusual for other employees in the City to see marginal increases to their health insurance contribution.

The Panel has also consciously kept the premium contribution percentage slightly below other firefighters in comparative communities. This is intended to help somewhat balance the wage differential that currently exists.

Award. Effective January 1, 2011, the premium contribution shall increase to 14%. (The value of the increased contribution will be deducted from the back pay award.)

5. NEW PROPOSAL - BUY BACK OF COMPENSATORY TIME (City Proposal #17)

The City acknowledged that “time back” hours accumulated by unit members has been a long standing benefit for hours engaged in various activities such as training/teaching assignments or community appearances. The City proposed a mechanism to better manage an employee’s accumulation of “time back” by considering it compensatory time (“time off”). It would cap the accumulated “time back” hours that can be accrued during the year by paying for time earned over the cap, and then require the time earned to be “zeroed out” on a specific date if not used.

The City noted that, while it would be a significant and immediate outlay of money, the compensation would be in current dollars as opposed to a higher rate in future years. The City sought to use the procedures set forth in an agreement recently reached with the SEIU bargaining

unit that capped the amount of compensatory leave an employee could have on the books and provided a mechanism to pay out current compensatory leave accumulations.

The Union countered that this proposal makes no sense when the City is claiming poverty and complaining that it lacks money. The Union sought to have the Panel incorporate its proposal 18 on Article 11 (response to time off requests), which will make it easier for employees to use comp time. The Union also suggested that another way to manage costs would be to control how much time is earned by limiting training and other non-emergency service to the City.

Discussion. One of the difficulties in any type of leave accumulation is that it is often paid out at higher rates than it is earned. This can become a significant cost to an employer. In an era in which accounting rules seek to make sure that employers properly credit unfunded liabilities, it is appropriate to limit for employees to a reasonable amount of accumulated compensatory time. This avoids the problem of accumulating significant amounts of liability at a higher wage rate. It also helps manage the problems of scheduling that can occur with additional time off.

Even though adoption of this proposal will force the City to incur costs at a time when it is facing financial hardship, payout of this liability is a one shot payment (paid out over several years). Furthermore, the payout of this money, even during difficult economic times, can be justified by long term benefits. There is certainly evidence that, regardless of what the City does on this issue, there are still significant economic challenges facing the City.

The Panel analyzed carefully the MOA agreed to by the City and the SEIU bargaining unit (City Exhibit Y). The Panel unanimously agrees the language of this agreement should serve as a basis for an agreement in this Award, modified to the needs of the Department. The Panel also examined the appropriate method for paying out employees with current balances. It noted

that, while a significant number of firefighters have balances over 100 hours, numerous firefighters have relatively small balances. It makes no sense for these small balances to be paid out of three years. Accordingly, language should be added that at least 80 hours shall be paid out in the first year of the program. Otherwise, the balances will be paid out in three equal installments.

Award. The following language should be included into a new section of Article 11.3 and be entitled "time back/compensatory time."¹¹

(i) With the mutual consent of the employee and the employer, an employee may accrue up to eighty (80) hours of compensatory time each year. Any hours over eighty (80) will be paid in cash. A request to utilize compensatory time will not be unreasonably denied. The utilization of compensatory time shall be denied if such utilization will create overtime. During the first week in December an employee will be permitted to cash out up to forty (40) hours of compensatory time.

(ii) Compensatory time is earned from April 15 to April 15 and will be paid out during the second pay period of May. An employee may accrue no more than 80 hours at any time (such employee will be paid for any hours over 80). On April 15 of each year, the employee may decide to either be paid out in full or carryover a maximum of 40 hours into the next year; any hours over the amount designated by the employee (up to a maximum of 40) as carryover on April 15 will be paid out.

(iii) Notwithstanding the provisions of paragraph (i) and (ii) above, all compensatory time "on the books" as of the date of execution of this Opinion and Award will be paid out to each eligible employee over the next three (3) year period commencing in May of 2012: that is: 1/3rd of the earned time will be paid on the 2nd pay period of May 2012; the next 1/3rd will be paid by the 2nd pay period on May 2013; and the balance paid out on the 2nd pay period of May 2014. Thereafter, the process detailed in (i) and (ii) above shall apply. For those employees with less than one hundred (100) hours "on the books," fifty hours will be paid in the first installment noted above and the remainder will be paid in the second installment noted above.

¹¹ The successor agreement (Article 11) should also be appropriately retitled.

**6. ARTICLE 17, SICK LEAVE FOR PROBATIONARY EMPLOYEES
(Union Proposal 22)**

Under the current contract, sick leave shall be accumulated at the rate of one day per month. This means that a new employee will have little or no sick leave available if s/he becomes ill during the first months on the job.

The Union sought to add language that would allow probationary employees to be advanced 12 days of sick leave in their first year of employment. It maintained that it is extremely unlikely this benefit would be abused since the probationary employee is anxious to create the right impression in order to become permanent. Moreover, the benefit would cost the City nothing since it is simply an advance on days that will be earned, not additional days.

The City argued that there was no justification for this proposal. It further noted that any employee could donate sick leave to a probationary employee if the need arises, pursuant to Article 17.11 of the contract.

Discussion. This is not a unique problem to many work situations. The reality is that even probationary employees sometimes get sick shortly after s/he starts work, before there is a chance to accumulate any sick leave. Such an illness can cause a financial hardship if the employee is forced to be on leave without pay status. Alternatively, it could encourage an employee to report to work ill, with the potential of spreading germs to other employees.

On the other hand, employers can get exceedingly frustrated with an employee who uses sick time before it is earned and then quits, costing the City money for an employee with little vested in the system. Even though this happens rarely within the firefighter community, it does take place.

The Panel discussed alternative solutions to this problem and decided that the best

approach would be to advance the employee six sick days upon the start of his employment. During these first six months, the employee would not accrue any additional sick leave. Thereafter, the employee will earn sick leave in accordance with the terms of the contract.¹² If such employee leaves within the first six months, any sick days used and not earned will be deducted from his final paycheck. This will protect an employee who gets sick in the early stages of employment and protect the City from an employee who abuses sick leave.

Award. The following language shall be added to the contract:

Probationary employees shall be advanced six (6) sick days at the start of their employment. If such employee leaves the employ of the City for any reason before these sick days would normally be earned or credited, the value of such used unearned time (leave) shall be deducted from the employee's final paycheck.

7. SCHEDULING ISSUES

- A. ARTICLE 22, CONVERSION TO A 24 HOUR SCHEDULE (Union Proposal #21)**
- B. ARTICLE 11.2(4), RESPONSES FOR REQUESTS FOR PROFESSIONAL TRAINING AND IMPROVEMENT COURSES (Union Proposal #18).**
- C. ARTICLE 11, REIMBURSEMENT FOR HOURS OF TRAINING (Employer Proposal #4)**
- D. NEW PROPOSAL REGARDING JURY DUTY, (Employer proposal #16, with Union Counter)**

Each of the above issues has significant implications on scheduling and possible overtime obligations. Each approach for resolution of these issues has advantages and disadvantages, both for the Department and the individual employee. For example, a 24 hour schedule may make it easier to maintain sufficient manning if employees schedule training and personal items on their "off" days. Such a schedule could also make an hour for hour reimbursement for training acceptable and may also give the Department the ability to give better notice regarding requests for leave. To insure that no one thinks the Panel is endorsing a particular schedule, it

¹² In the first year, this means the employee will receive six (6) days on the first day of employment and then one day per month from month seven to month twelve (for a total of 12 days.).

may be that, in a city such as Oswego that relies heavily on EMT type calls, the fatigue factor present in a 24 hour schedule is too risky for the safety of both the employees and the public they serve. It may also be that such a schedule would cause scheduling nightmares and increase overtime expense.

All of these proposals have some merit (and some disadvantages). All involve issues that can affect positively and negatively the day to day operations of the Department. All are interrelated and can be used to provide a safe and sensible schedule for a 24/7 operation that gives employees as much notice as possible for time off while keeping overtime to a minimum. It is also the Panel's collective experience that proposals such as these should not be ordered by an arbitration panel but should only be modified after a careful and detailed analysis of the pros and cons of each proposal by the people who know the inner working of the schedule best – the management of the Department and its employees. Items such as work schedule should be evaluated and modified only after careful consideration of the advantages and disadvantages of the various possibilities. Each has advantages and disadvantages to the unique aspects of the Oswego Fire Department and its employees. It would be inappropriate for this arbitration panel to analyze these advantages and disadvantages. Changes should be considered only after a full discussion with the various affected personnel who know, on a day to day basis, all the scheduling intricacies of the Department.

During these discussions, the parties should try to develop approaches that will avoid waiting until the last minute to grant approval for training and development and have training reimbursed on an hour for hour basis, rather than the entire shift. Accommodating these goals may be more attainable with an alternative shift or may be attained with various adjustments to the current schedule. The only way to achieving these goals is through direct discussions

between the parties. If these discussions cannot bring about change, the current system shall continue.

The proposal on jury duty fits into the same category of items that must be addressed by the parties, regardless of the manner, if any, in which the schedule is adjusted. Both sides have an interest in developing a clear concise policy in which employees are able to participate in this important civic duty without undue hardship and expense to both the employer and the employee.

Award. The parties are directed to further explore adjustments to schedule and/or procedures that will address each of the above issues. The language in the current contract shall continue unless the parties agree to changes.

8. ARTICLE 14, ORGANIZATIONAL LEAVE (Employer Proposal #5)

The current contract allows employees to attend conferences and district meetings without loss of pay. Sixteen days total are allowed, with a cap of four (4) employees off at a time.

Position of the City. The Employer seeks to reduce the total days off allowed to twelve (12) and to reduce the cap to two (2) employees at one time.

Position of the Union. The Union sought to maintain the language of the current contract.

Discussion. The City argued that its proposal would save the City money on overtime costs. It also noted that the current allotment in the firefighters contract is high when compared to other provisions in the comparative cities. The Union maintained that the current allotment is reasonable and appropriate, especially in light of the unique characteristics of the Department.

The Panel spent a significant amount of time on this issue. After thorough discussion, the

Panel believes that reducing the 16 days to 12 days while keeping the same number of people who could use the leave at any one time at 4 to be a reasonable and workable compromise.

Award. The last two sentence of article 14.2 shall be changed to the following:

Twelve days total will be allotted per year, without loss of pay, to attend these functions. There will be a cap of four (4) employees off at a time. This change should not be applicable to any leave approved prior to the effective date of this Award.

9. REMAINING ISSUES

The Panel has reviewed in detail all of the demands and proposals of both parties, together with all of the extensive material submitted by both sides. The fact that some of these proposals have not been specifically addressed does not mean that they were not evaluated and considered in the overall context of contract terms and benefits. In any interest arbitration award, as in any collective bargaining agreement, there must be a careful balance between changes in the current contract and continuance of a system currently in place. The process is by its nature conservative, and changes are usually made in incremental steps. The Panel in this Opinion and Award has attempted to balance the current situation between the parties with the proposed changes made by both parties. The Panel believes that this approach is consistent with the conservative nature of collective bargaining and interest arbitration awards.

Award. Except for those proposals and/or items previously agree upon by the parties, any proposals and/or items other than those specifically modified by this Award are hereby rejected.

Where appropriate, the terms of the current contract shall remain in full force and effect.

10. DURATION OF CONTRACT.

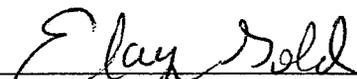
The contract shall be a two year contract expiring on December 31, 2011.

RETENTION OF JURISDICTION

The Panel Chairman hereby retains jurisdiction of any and all disputes arising out of the interpretation of this Opinion and Award.



Ira B. Lobel
Public Panel Member and Chairman



Elayne G. Gold
Public Employer Panel Member



Michael Cook
Employee Organization Panel Member

AFFIRMATION

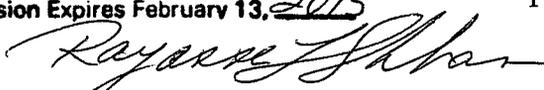
STATE OF NEW YORK)
COUNTY OF ALBANY)

I, Ira B. Lobel, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my award.

Date: August 25, 2011

RAYANNE L. SHEEHAN
Notary Public, State of New York
Qualified in Schenectady County
No. 5039263

Commission Expires February 13, 2015



STATE OF NEW YORK)
COUNTY OF ALBANY)

I, Elayne G. Gold, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my award.

Date: August 24, 2011

RAYANNE L. SHEEHAN
Notary Public, State of New York
Qualified in Schenectady County
No. 5039263

Commission Expires February 13, 2015

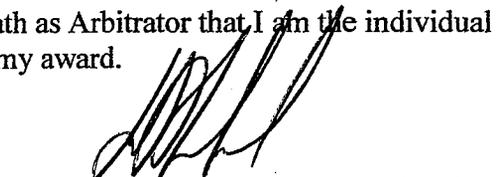
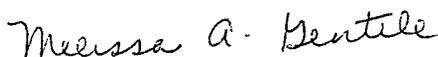


STATE OF NEW YORK)
COUNTY OF OSWEGO)

I, Michael Cook, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my award.

Date: August 22, 2011

MELISSA A. GENTILE
NOTARY PUBLIC, STATE OF NEW YORK
NO. 01GE4963918
QUALIFIED IN OSWEGO COUNTY
MY COMM. EXPIRES 3/19/2014



Ira B. Lobel
Public Panel Member and Chairperson



Elayne G. Gold,
Public Employer Panel Member



Michael Cook
Employee Organization Panel Member