

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Compulsory Interest Arbitration

-between-

PLATTSBURGH PERMANENT FIREMEN'S
ASSOCIATION, LOCAL 2421

Employee Organization,

-and-

CITY OF PLATTSBURGH

Public Employer,

PERB Case No.: IA 2013-12; M2012-305

BEFORE: Jay M. Siegel, Esq.
Public Panel Member and Chairman

Mimi C. Satter, Esq.
Employee Organization Panel Member

Bryan J. Goldberger, Esq.
Public Employer Panel Member

APPEARANCES:

For the Plattsburgh Permanent Firemen's Association, Local 2421
Satter & Andrews, LLP
By: Sarah Ruhlen, Esq.

For the City of Plattsburgh
Goldberger & Kremer
By: Brian S. Kremer, Esq., Of Counsel

OPINION

AND

AWARD

NYS PUBLIC EMPLOYMENT RELATIONS BOARD

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JUN 05 2014

CONCILIATION

BACKGROUND

Pursuant to the provisions contained in Section 209.4 of the Civil Service Law, the undersigned Panel was designated by the Chairperson of the New York State Public Employment Relations Board (PERB) to make a just and reasonable determination of a dispute between the Plattsburgh Permanent Firemen's Association, Local 2421 (Union) and the City of Plattsburgh (City).

The City is located in Clinton County. It is in the northern part of New York State directly south of the Canadian border by the province of Quebec. The City is the County seat. In the 2010 census, it had a population of 19,989.

The City's Fire Department operates on a 24/7 basis out of two stations. The Fire Department bargaining unit currently has 28 firefighters, 4 lieutenants and 4 captains, all of whom are represented by the Union. A Chief and Assistant Chief are the only firefighting members of the Department who are not represented by the Union.

On a daily basis, the Department operates one pump truck and one ladder truck. There are at least six firefighters assigned to each shift. The Department makes nearly 1,000 fire runs per year and approximately 3,000 ambulance runs per year. All firefighters with 15 or less years of service are required to earn and maintain an Emergency Medical Technician certificate.

The last collective bargaining agreement (CBA) covering this unit expired on December 31, 2007. In 2012, the parties engaged in interest arbitration. On November 12, 2012, an Interest Arbitration Award was issued by Panel Chair Louis Patack, which resulted in an Award containing terms through December 31, 2009.

The parties began negotiations for a successor contract in the fall of 2012 but the negotiations were unsuccessful. Thereafter, acting pursuant to PERB's rules of procedure, a PERB-appointed mediator met with the parties. Mediation was unsuccessful and on May 16, 2013 the Union filed a Petition for Interest Arbitration pursuant to Section 209.4 of the Civil Service Law.

The City filed its response to said Petitions on May 24, 2013. On June 19, 2013, the undersigned Public Arbitration Panel was designated by PERB, pursuant to Section 209.4 of the New York State Civil Service Law, for the purpose of making a just and reasonable determination of this dispute.

A hearing was conducted before the Panel at the offices of the City on November 22, 2013. At the hearing, all parties were represented by counsel. The parties submitted numerous and extensive exhibits and documentation, including written closing arguments in which all parties presented extensive arguments in support of their respective positions.

Thereafter, the Panel fully reviewed all data, evidence, arguments and issues submitted by the parties. After significant discussion and deliberations at multiple Executive Sessions, the majority of the Panel reached an Award. The Award is a compromise. It does not fulfill the wishes of either party. Accordingly, all references to "the Panel" in this Award shall mean the Panel Chair and at least one other concurring member.

The positions taken by both parties are quite adequately specified in the Petition and the Response, numerous hearing exhibits, and post-hearing written submissions, all of which are incorporated by reference into this Award. Such positions will merely be

summarized for the purposes of this Opinion and Award. Accordingly, set out herein is the Panel's Award as to what constitutes a just and reasonable determination of the parties' Award setting forth the terms and conditions for the period January 1, 2010 through December 31, 2011.

In arriving at such determination, the Panel has specifically reviewed and considered all of the following criteria, as detailed in Section 209.4 of the Civil Service Law:

- 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 the 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.

COMPARABILITY

Section 209.4 of the Civil Service Law requires that in order to properly determine wages and other terms and conditions of employment, 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."

Union Position

The Union stresses that comparability is the criterion establishing the market to be used to assess how existing terms and conditions of employment compare to similar employees within the relevant market. In other words, it is a search for the market within which a comparison of prevailing wages and benefits is to be made.

The Union contends that its members should be compared with firefighters in seven jurisdictions that it claims have similar characteristics in terms of geographic area, home values and institutions of higher learning. The Union maintains that these jurisdictions share similar economic challenges and opportunities and draw on similar workforces.

The Union notes that since both the City and the Union have identified the cities of Cortland and Oswego, each city certainly must be considered for comparability purposes. In the Union's view, since there are a limited number of municipalities in northern New York State that have professional fire departments, it is entirely appropriate to consider other parts of the State for comparability purposes. The Union asserts that its proposed universe of comparables identifies cities of like size to Plattsburgh that also have universities or colleges. This is relevant, in the Union's view, due to the attendant effects that universities and colleges have on population and income. For these reasons, the Union proposes to add the cities of Auburn, Geneva, Glens Falls, Ithaca and Watertown to the universe of comparables.

The Union stresses that its proposed list of comparables matches up very closely with the City in one or more income categories. It avers that income similarity is more relevant than population similarity because it speaks more directly to the City's ability to

pay. The Union notes that all of the cities in the universe of comparables have median household and median family incomes within 20% of the City's.

The Union opposes the City's proposal to compare the City only to a few select municipalities in northeastern New York. It states that the City's proposed list of the City of Ogdensburgh and the villages of Lake Placid, Massena, Potsdam and Saranac Lake is a limiting market that does not comport with the comparability criteria. To the Union, the population of these jurisdictions bears no comparison to the City's. It notes that Lake Placid has a population of 2,521 and Saranac Lake has a population of 4,506. Equally important, the population density of all of the City's proposed comparables is significantly lower than Plattsburgh.

Most importantly, the Union stresses that several of the municipalities in the City's proposed list of comparables do not employ professional firefighters. Instead, in places like Lake Placid, Potsdam and Saranac Lake, the municipality relies on volunteers and some paid fire drivers, who are vastly different and far less trained than professional firefighters. In the Union's estimation, the City's proposed group is totally invalid. The Union also notes that City's failure to provide any specific information about its proposed comparables shows that these communities are too dissimilar to be considered as comparables.

Finally, the Union stresses that the City's Police Department is a comparable that must be considered by the Panel. The Union maintains that police and firefighters are similar insofar as recruitment pool, risk, educational background and department structure is concerned.

City Position

Since the previous interest arbitration panel found that the cities of Cortland and Oswego are comparable to Plattsburgh, the City recognizes those two cities as valid comparables. However, the City objects to the Union's proposal to add the cities of Geneva, Glens Falls, Oswego, Ithaca and Watertown to the list of comparables. In the City's view, while Cortland and Oswego are arguably comparable to it based on their similar population, per capita incomes and median incomes, the other proposed cities are not comparable in any way.

The City cites statistics of the various municipalities to show why the Union's proposed list of comparables should be rejected. It notes that the population difference between all of the cities ranges between 26.5% to 50.2%. For example, Ithaca's population of 30,014 is more than 50% larger than the City's and it has more than 10,000 residents than Plattsburgh.

Most important to the City is that none of the communities proposed by the Union are located anywhere near Plattsburgh. Glens Falls, the closest in the proposed list of comparables, is nearly 100 miles away and in a different economic region of New York State. The others are all located between 131 miles and 218 miles from Plattsburgh and are located in places that are vastly different than Plattsburgh. The City stresses that these cities have different populations and economic conditions, in addition to having an entirely different labor market than Plattsburgh. The City argues that it does not compete with these markets for firefighters and that these communities do not share the same housing market as the City. To the City, the Union's proposed list of comparables is utterly meaningless.

In stark contrast, the City claims that the communities it proposes to add to the list of comparables is appropriate because all of the communities are located within the North Country of New York. The City contends that this is the most appropriate group of comparables because they all share similar populations, per capita and family incomes, geographic location and housing market. To the City, these are the communities that it competes with for firefighters and these are the communities that its firefighters interact with.

The City urges this Panel to determine that these communities are most relevant because they are all within the same labor market. The City maintains that comparability should be a function of geographic proximity more than anything else. In the City's view, the North Country fire departments give the most accurate and fairest picture of the prevailing terms and conditions in the City's labor market. The City asserts that the comparable communities should be limited to the comparables offered by the City, i.e., Cortland and Oswego, as well as the five other fire departments in the North Country.

Panel Determination on Comparability

The Panel Chair notes that less than eighteen months ago, a different Panel chaired by neutral Arbitrator Louis Patack determined that the cities of Cortland and Oswego were the most appropriate comparables to Plattsburgh. At that time, Arbitrator Patack noted that both the City and the Union agreed that Cortland and Oswego were most comparable to the City.

The Panel Chair sees little justification to deviate from a determination that was rendered just recently as there is nothing in the record showing that any circumstances have changed to justify this Panel from deviating from the former Panel's decision.

Equally important, the Panel Chair is not persuaded that any of the proposed new comparables from either the Union or the City shares enough similarities to be added to the comparables list. The new proposed comparables offered by the Union are located a great distance from the City. They do not share the same labor market and are different insofar as population is concerned.

The City's proposed new comparables are not being added because the municipalities are much smaller than Plattsburgh. Most have them are small village fire departments with scores of volunteers that serve small populations in rural areas. The City's fire department is a fire department that serves a small city using professional firefighters. It faces an entirely different day-to-day work experience than those firefighters in the City's proposed universe of comparables. Accordingly, the Panel considers the appropriate comparables to be the cities of Cortland and Oswego. The Panel will also consider the City's police department to have some relevance insofar as comparability is concerned. Both departments share the same employer. Both are interest arbitration eligible. They compete in the same labor market, share similar risks and live in the same housing market.

ABILITY TO PAY

Union Position

The Union stresses that the City's tales of economic gloom and doom are completely unsupported by the record. The Union maintains that the ability to pay analysis is not a global one. What is relevant here is that the City is in excellent financial condition. Its residents are not struggling and are not overtaxed. In the Union's view, the City's claim that it is suffering financially is a gross exaggeration.

The Union asserts that its financial expert, labor economist Kevin Decker, wholly supported its contention that the City's strong financial position allows it to support a fair wage increase and to support the other Union proposals requiring funding. The Union stresses that Mr. Decker's analysis is based on the City's records, including its Audited Financial Statements, adopted and proposed budgets, constitutional tax limit forms, Moody's Investor Services forms and a variety of other objective documentation that is available for anyone to review.

The Union notes that the City has been able to maintain small and reasonable annual tax increases over the past five years. It states that real property taxes have risen an average of 3.68% per year in the past five years. Equally important, the assessed value of taxable property and the full value of taxable property has risen an average of 2.1%. According to the Union, the full tax rates per \$1,000.00 of total valuation of real property is well in line with comparable cities.

The Union stresses that there are several very important indicators establishing that the City is more affluent and in a better financial condition than most of the comparables. It states that average family income is \$76,832, an amount that is higher

than all but one of the cities proposed by the Union in its list of comparables. In addition, the City continues to experience robust population growth with a 6.2% increase in population, the largest of any of the comparables. The Moody's Bond Rating is Aa3, which is higher than any of the comparables and a strong rating overall, according to the Union.

The Union stresses that the City continues to enjoy important revenue increases. It notes that sales tax revenues have increased from \$3.8 million in 2011 to over \$4.1 million in 2012. Sales tax revenues had already exceeded a whopping \$4.5 million through the first three quarters of 2013. The Union notes that the City's actual revenue exceeded budget predictions by nearly \$ 1 million every year from 2009 to 2011 and that the City's actual revenues exceeded budget predictions by \$253,866 in 2012. These important facts, coupled with the City's consistent overestimation of expenses by nearly \$1 million per year for each year between 2009 and 2011, demonstrates that the City is in a strong financial position and that it clearly has the ability to pay for a fair and reasonable salary increase.

Although the Union concedes that the City ended the 2012 fiscal year with a deficit, it asserts that its overall financial picture is healthy. The Union points out that Mr. Decker testified that one deficit year after four years of averaging million dollar surpluses is not a cause for alarm. According to the Union, other important factors supporting its position include the City's unassigned fund balance of \$1.85 million, which Mr. Decker testified to be very adequate. In addition, the Union stresses that the City over-budgeted for Fire Department personal service spending by \$406,780 in 2010 and \$224,029 in 2011.

The Union argues that City Chamberlain Richard Marks' testimony that the City is facing a projected deficit in 2014 is highly speculative. The Union maintains that Mr. Marks essentially admitted this during his cross-examination. Moreover, shortly before the arbitration hearing, the City agreed to salary increases for the years 2013 to 2016 for its police officers and salary increases retroactive to 2010 and continuing through 2015 for its AFSCME bargaining unit members. The Union insists that it is not credible for the City to make long-term salary commitments to other bargaining units and then claim poverty when its firefighters seek reasonable salary increases.

For all of the reasons above, the Union urges the Panel to find that the City has the ability to pay for its economic proposals.

City Position

The City insists that the Panel cannot ignore the fact that its financial picture is far weaker than it formerly was. It stresses that the ability of the City to provide salary increases must be balanced with the interests and welfare of the public in controlling costs and providing necessary public services.

The City argues that the 2% tax cap legislation significantly reduces the City's ability to annually increase revenues. It urges the Panel to be mindful of the 2% tax cap when rendering an Award. The City maintains that an excessive award will not only increase the tax burden on its citizens but will also limit the other services the City can provide to its residents.

Although the City concedes that the 2013 revisions to Section 209 of the Civil Service Law are not applicable, the City stresses that under the new criteria the City would be a "fiscally eligible municipality." It claims that its average full value property

tax rate is greater than the full value property tax rate of 75% of the State's municipalities. In the City's view, this indisputable fact should play an important role in the Panel's consideration of the City's ability to pay.

The City insists that despite some positive past economic conditions, its projected general fund balance at the end of 2014 will be dangerously low. The City notes that Mr. Decker testified that the New York State Comptroller recommends that a municipality have a fund balance of at least 5% of annual expenditures and that anything less than 5% is "dangerously low." Indeed Mr. Decker testified that he would consider the City's fund balance to be dangerously low if it fell below \$1.15 million.

The City concedes that its fund balance was healthy in the past. It notes that its fund balance as of December 31, 2012 exceeded \$4 million and that it was approximately \$2.5 million as of December 31, 2013. However, the City expresses grave concern about its financial condition because it claims its projections going forward show that its fund balance will dip well below \$1 million by the end of 2014. The City notes that its analysis raises even greater concerns about its precarious financial condition because it does not account for the 2014 salary increases to police unit members and AFSCME unit members and does not include any possible raises provided to firefighters.

The City argues that its 2014 projections should be given credence because Mr. Marks' projections in previous years have been very accurate. Hence, the City maintains that the Panel should determine that the City has an extremely limited ability to pay for an Award providing increases to salary and some of the other Union proposals.

The City takes issue with some of the Union's arguments regarding ability to pay. Although the City concedes that from 2009 to 2011 it greatly overstated expenditures and

understated its revenues when it prepared its annual budgets, the City stresses that this approach is a thing of the past. It notes that in 2012 budget, the City appropriated \$1.84 million of fund balance and used more than \$1.3 million. In the 2013 budget, the City used more than \$1.6 million of the appropriated \$2.3 million. The City argues that even if it follows this recent model and uses only two-thirds of the appropriated fund balance amount in 2014, its projected fund balance would still be less than 5%, or “dangerously low” according to Mr. Decker.

The City submits that it simply cannot afford to pay the salary increases and other economic items proposed by the Union. It urges the Panel to render a fiscally conservative Award that focuses on its precarious financial condition and allows the City to pay the other costs of government.

Panel Determination on the City’s Ability to Pay

The Panel Chair has carefully considered the statutory criteria regarding ability to pay as provided through the positions of the parties from the testimony, exhibits and post-hearing briefs filed, that form the record in this matter.

The Panel Chair is cognizant that during the term of this Award, the national, New York State and local economy went into a tailspin unlike anything seen in recent history. Revenues went down and unemployment substantially increased. The housing market dipped significantly for the first time in years and numerous companies went out of business or struggled to stay afloat. New York and its municipalities have clearly been affected by the uncertainties caused by this recession.

The City managed to stay fiscally strong during the recession. Its fund balance increased. It saw increases to sales tax revenue. Its population showed remarkable growth during times when many upstate communities have seen significant population decreases.

Nonetheless, the City has had to contend with having to come up with money to fund substantial increases to pensions and health insurance. The fact remains that in the more recent past the City has been taking in less money than it has expended. This has caused its fund balance to erode. This is a real challenge for the City that requires fiscal prudence.

On the other hand, the Panel Chair finds that the record establishes that the fundamental economic conditions of the City remain strong. The City has consistently underestimated revenues and overestimated expenses. The City has seen genuine growth in sales tax revenue over the past few years, which is a clear indicator that the City and the region's economy are healthy. It must be noted that sales tax revenues grew by \$300,000 from 2011 to 2012 and grew by an additional \$400,000 through the first three-quarters of 2013. When the complete 2013 sales tax data is submitted, the City is likely to have seen its sales tax revenue grow by more than \$1 million from 2011 to 2013.

The City has experienced population increases. The City has a relatively wealthy population when compared to the comparables. The City's Aa3 financial rating is strong. It is an indicator of solid fiscal health.

The City has obviously done an excellent job of managing its resources. The Panel Chair is confident that the City will continue to maintain a stable position despite some recent budget concerns.

In addition, the City's two recent settlements with the police and AFSCME bargaining unit are a clear indication that the City has the ability to pay for this Award. The City cannot commit to salary increases covering multiple years for those units and then claim that it lacks the ability to pay for a reasonable increase to the firefighters bargaining unit. For all of these reasons, the Panel finds that the City has the ability to pay for this Award and that the wage increases awarded herein constitute a fair and reasonable Award.

THE INTERESTS AND WELFARE OF THE PUBLIC

Union Position

In the Union's view, this consideration encompasses the fact that the City's taxpayers benefit from having a professional, well-trained fire department. In the Union's estimation, this can only happen when its members' wages and benefits are competitive so that the City can attract and retain quality employees. The Union opines that the Panel must issue an Award that allows its members to become more competitive so as to ensure that its members will not leave the City for other comparable positions outside of the City.

City Position

The City stresses that the Panel is obligated to consider the fact that this Award will directly affect the citizens and taxpayers of the City and the economic future of the City for years to come. It must also consider the fact that citizens in the City are struggling with increased tax burdens and concerns about the ability of its City government to remain on sound financial footing. These considerations, along with the

fact that the economic forecast is guarded, mandate that the Panel exercise its power with great care and caution while fashioning its Award.

Panel Determination on Interests and Welfare of the Public and Financial Ability of the Public Employer to Pay

The Panel has carefully considered the statutory criteria regarding the interests and the welfare of the public and financial ability of the City to pay, as provided through the positions of the parties from the testimony, exhibits and post-hearing briefs forming the record in this matter. In looking at this specific issue, the Panel Chair finds that the Union's argument that the public benefits by having a competitively compensated staff of firefighters must be given credence. It influences the Panel Chair's determination that there is a need for a wage adjustment in both years covered by this Award. The Panel Chair's Award in the area of salary is premised on the recognition that it is prudent for the City and beneficial to the public for its firefighters to be competitively compensated in the context of the City's ability to pay.

At the same time, except for salary, all of the other economic proposals advanced by the Union have been rejected by the Panel Chair because he is concerned about the detrimental effect that any new long-term financial commitments may have on the City's bottom line. It is not in the interest of the public to significantly augment the economic package provided to firefighters as this could have a detrimental impact on the City's budget.

COMPARISON OF PECULIARITIES OF THE FIREFIGHTING PROFESSION

The Panel has also carefully considered the statutory criteria regarding the comparison of the firefighting profession with other trades or professions, including

specifically: (1) hazards of employment; (2) physical qualifications; (3) educational qualifications; (4) mental qualifications; and (5) job training and skills. The Union asserts that the firefighting profession is so unique, dangerous and demanding that no other useful comparison can be made with other trades or professions, with the possible exception of police officers.

The parties do not dispute the fact that appropriate weight must be given to the especially hazardous nature of firefighting work and the unique training, skills, pressures and dangers that firefighters face each day. The Panel finds that the peculiarities of the profession mandate a direct comparison with firefighters officers, with some consideration being given to police officers as well.

BASE WAGES

Union Position

The Union insists that the current wages paid to its firefighters are drastically below area salaries. It seeks to remedy this shortfall by requesting an increase of 5% for 2011 and 2012. Although the Union recognizes that the inequity in its wages will take years to rectify, it maintains that a 5% increase is a step in the right direction.

The Union submits salary comparisons. It contends that the comparisons show that its proposal to raise salaries 5% per year is fair and reasonable. For example, it notes that Cortland firefighters are paid nearly \$6,000 more annually than firefighters in Plattsburgh after five years of service. Police officers in Plattsburgh receive nearly \$10,000 more annually than firefighters in Plattsburgh.

The Union is gravely concerned about the entry level salaries of its firefighters. It notes that the United States food stamps program has guidelines establishing that a four person household with an annual income of \$30,624 or less is living at 130% of the national poverty level and is eligible for food stamps. Thus, an entry level City firefighter earning a salary of \$30,473 who has a wife and two children is earning less than the income eligibility for food stamps. To the Union, this data makes it abundantly clear that its proposal is not some kind of greedy salary grab. Rather, it is an attempt to rectify the financial plight of its firefighters.

The Union stresses that the salaries of its lieutenants and captains are particularly dismal when compared to their counterparts in the City's Police Department. According to the Union, its lieutenants and captains lag approximately \$10,000 below their police counterparts at virtually every service level.

The Union maintains that the City has the ability to pay for its proposal. It asserts that Mr. Decker's report and testimony establishes that the City has the financial means to pay for the Award. This is without even considering the robust sales tax increases the City has experienced from 2011 to 2013.

In the end analysis, the Union maintains that through a small property tax increase, by using the increases sales tax revenue or using the unassigned balance in the General Fund, the City can pay for its proposed 5% salary increase. It contends that this is necessary to start addressing the discrepancy in pay between the City's firefighters and its comparables.

City Position

The City maintains that the Panel should deny the Union's salary proposal. While acknowledging the tremendous public safety work that firefighters perform, the City asserts that the Union's proposal should be wholly rejected because it is completely unaffordable given the City's fiscal restraints.

In the City's estimation, the Union's proposal to increase salaries by 5% per year is completely excessive in this economic climate. The City stresses that it is not aware of any comparables who have received wage increases of 5% per year.

The City asserts that 5% increases would adversely affect the City's economic picture. It asserts that even a 3% increase for 2010 would cost the City more than \$400,000 in retroactive payments. An additional 3% increase in 2011 would add an additional \$345,000 in retroactive payments for a whopping amount of \$745,000 of retroactive costs. To the City, this highlights why the Union's demand for 5% salary increases is untenable. It would undoubtedly lead to nearly \$1 million in retroactive payments, something the City simply cannot afford.

The City claims that the Union's proposed increases are totally unreasonable as they are well beyond the increases granted to other City employees. For example, after the AFSME bargaining unit received no increase in 2009, it recently ratified an agreement in which its members will receive 1.5% per year for each year from 2010 to 2015. Council 82, on behalf of its police officers, recently ratified an agreement with the City providing salary increases of 1.5% in 2013, 1% in 2014, 1.5% in 2015 and 1% in 2016. Public library employees received a 3% increase in 2010 followed by no increase for each of the next four years. In addition, City managers have had two years with no

salary increase during the past five years. In the City's estimation, the evidence shows that all of the City's employees are recognizing the dire financial issues the City will be confronting in the future. The City urges the Panel to take note of the same when fashioning its award.

The City claims that, contrary to the Union's protestations, its members are competitively compensated. The City contends that its firefighters receive very competitive wages when compared to firefighters in Cortland and Oswego, the main comparators. In the North Country, the City's firefighters earn far more than firefighters in neighboring jurisdictions.

For all of these reasons, the City urges the Panel award no salary increase to firefighters. At the very least, the Panel should reject the Union's demand.

Panel Determination on Base Wages

The Panel Chair has carefully considered the statutory criteria balancing the reasonable economic needs of the City's firefighters, with the obligations of the City in the context of what is fair and reasonable in a more challenging economy.

Wages are one of the most important elements in any labor agreement. Employees have the utmost concern about the wages they will be paid and wages represent the greatest expenditure for the City.

The record contains data that supports both parties' positions. The City faces some genuine economic concerns. It has had to reduce its robust fund balance in recent years in order to balance its budget. Its projections do not forecast nearly as solid a financial picture as it has had in the recent past. The City had a structural deficit in 2012. These are genuine economic issues that cannot be ignored.

The general state of the economy and the overall tax burden faced by taxpayers, whose burden has increased substantially in recent years, leads the Panel Chair to conclude that the wage proposal made by the Union must be significantly moderated. Although the police unit received wage adjustments of 3.9% in 2010 and 2011, the Panel Chair notes that these increases were agreed upon when the City's financial picture was more positive than it is now. These facts, coupled with the City's limited ability to increase revenue attributable in part to the 2% tax cap, mandates a much more moderate economic settlement than the one being proposed by the Union.

At the same time, the City's proposal for no salary increase is not supported by the record. The record establishes that the City has some positive economic factors that are objective and support a wage adjustment for the firefighters. Sales tax revenue has increased at a very healthy rate of approximately \$1 million between 2011 and 2013. The City's Aa3 rating from Moody's Investor Service is strong and is an objective rating from an independent agency that essentially is bullish on the City as a source of investment. The City's population is growing at a very fast clip, which should bode well for the City's future. In the Panel Chair's view, the right balance to strike between the City's economic concerns and the firefighters' desires to be treated fairly and equitably compensated requires an award that is 2% per year. This allows the City to manage its resources carefully and limit the impact of this Award on its taxpayers.

The Panel Chair finds that a wage increase of 2% in 2010 and 2% in 2011 is the most appropriate way to handle salary increases for this unit at this time. This will allow unit members to maintain their relative standing vis-à-vis the list of comparables with a limited impact on the City's overall budget.

The Panel Chair finds it important for City's firefighters to maintain their standing relative to other firefighters in the universe of comparables and the police officers in the City. If the Panel awarded no salary increase as proposed by the City, which is well below the average amount received by other employees in the universe of comparables, the Panel could jeopardize the relative standing of the City's firefighters.

In awarding these salary increases, the Panel finds that the City has the ability to pay for a fair increase in wages overall.

Accordingly, and after careful consideration of the statutory criteria, testimony, exhibits, documentation, and post-hearing briefs filed, forming the record in this matter, the Panel makes the following:

AWARD ON BASE WAGES

ARTICLE 21- BASE WAGES

Salaries at all steps and for all ranks shall be increased by 2% effective January 1, 2010, and by 2% effective January 1, 2011.

X
Concur
Mimi C. Satter, Esq.

Dissent

Concur
Bryan J. Goldberger, Esq.

X

Dissent

**PAYMENT FOR VACATION AT THE TIME OF SEPARATION FROM
EMPLOYMENT**

City Position

Firefighters are currently allowed to accumulate and be paid for an unlimited amount of vacation time at the time of their separation from employment with the City.

The City proposes to eliminate the ability of unit members to accumulate an unlimited

amount of vacation time each year. Instead, it proposes to require all unit members to take their vacation time each year and to not be permitted to accumulate anything beyond the amount each individual firefighter has personally accumulated.

The City stresses that it has paid out almost \$160,000 in accumulated vacation time to retirees since 2008. It notes that six employees received more than \$10,000 of vacation pay at the time of retirement.

The City expresses grave concern about the amount of vacation time that firefighters have accumulated. It asserts that as of the arbitration hearing date, more than 161 weeks of vacation had accumulated on the books for its firefighters, which represents a total liability of more than \$164,000. The City maintains that it is untenable for it to be required to continue growing this liability in these uncertain economic times and in light of its rapidly diminishing fund balance.

The City avers that vacation time should be used by firefighters each year. It contends that vacation time has been showed to reduce the risk of various ailments, including heart disease, obesity and other stress disorders.

For all of the reasons above, the City urges the Panel to adopt its proposal.

Union Position

The Union asserts that the City's proposal to eliminate firefighters' rights to accumulate an unlimited amount of vacation time should be rejected. The Union maintains that the unlimited accumulation provision must be considered in the context of Article V, Section 3 of the CBA. That provision restricts the use of vacation time in that it prohibits more than two members of a platoon from being on vacation at the same time.

The Union stresses that newer employees with less seniority end up saving vacation time because they have great difficulty fitting their vacation time in due to the constraints in the CBA regarding the use of vacation time. The Union avers that when this occurs at least its members are compensated for having difficulty taking vacation. In the Union's view, this provision is also valuable to the City because when employees take less vacation, there is less overtime costs paid out to firefighters who cover for vacationing employees.

The Union argues that the City would be better served by the maintenance of the status quo. It urges the Panel to reject the City's proposal.

Panel Discussion on City Proposal to Eliminate Unlimited Vacation Accumulation

The Panel Chair finds that it is appropriate to have some cap on the amount of vacation time that employees may accumulate and be paid for. The evidence in the record establishes that over the past few years the City has paid out significant sums of money to compensate employees for unused vacation time at the time of separation. The problem with the current provision is that it is unlimited. In other words, there is no cap and the City's liability can grow without it having any control over it. Hence, this benefit has the potential to add further constraints on the City's budget. It also prevents the City from having predictability insofar as the payouts are concerned.

The Panel Chair is convinced that some cap on the amount of vacation that can be accumulated and paid out at the time a firefighter separates employment is appropriate. It will cap the City's liability and allow the City to better predict its potential economic liability.

At the same time, the Panel Chair does not feel it is appropriate to require firefighters to use all of their vacation time each year. There are certain requirements in the CBA that may prevent certain firefighters from using all of their vacation each year. Thus, allowing firefighters to accumulate some vacation time should continue to occur. It should simply not be allowed to continue in an unlimited manner.

Accordingly, and after careful consideration of the statutory criteria, testimony, exhibits, documentation, and post-hearing briefs filed, forming the record in this matter, the Panel makes the following:

AWARD ON ELIMINATING UNLIMITED VACATION ACCUMULATION

The language currently in Article V, Section 5 of the Collective Bargaining Agreement shall remain, as subparagraph (a). The following will be added as new subparagraphs:

- b) Except as specifically set forth below, members may not carry forward more than 10 weeks of accrued vacation time from one year to the next.
- c) All employees who have in excess of 10 weeks' accrued vacation time as of December 31, 2014 must utilize such vacation accruals in excess of 10 weeks no later than December 31, 2017 or forfeit any unused vacation accruals over 10 weeks. To the extent said employees utilize accruals in excess of 10 weeks before December 31, 2017, they shall be prohibited from "replenishing" same. To the extent any such employee leaves service before December 31, 2017, he or his beneficiaries shall be entitled to the full payout of accrued time.

d) Absent a note from a health care provider, verifying illness or injury, an employee shall not be allowed to cancel vacation scheduled for 2014 in order to increase vacation accruals.

e) At the time of separation from City employment and in addition to the 10 weeks referenced in this Article and section, the employee or his/her beneficiary shall be compensated per subparagraph (a) above, for any unused vacation time for the terminal year.

Concur
Mimi C. Satter, Esq.

 X

Dissent

 X

Concur
Bryan J. Goldberger, Esq.

Dissent

GENERAL MUNICIPAL LAW 207-A PROCEDURE

During the course of this interest arbitration proceeding, the parties agreed to change the procedure regarding the selection of an arbitrator for disputes that arise under General Municipal Law Section 207-A. The parties' agreed upon change is intended to allow these disputes to be processed, heard and decided in a more expeditious and mutually agreeable manner.

Accordingly, and after careful consideration of the statutory criteria, testimony, exhibits, documentation, and post-hearing briefs filed, forming the record in this matter, the Panel makes the following:

AWARD ON GENERAL MUNICIPAL LAW §207-A PROCEDURE

Article XVIII, Section 6 (A) shall be modified to state as follows:

Appeal of Adverse Determinations

A. In the event of any dispute arising under the terms of this procedure, the firefighter or the City may appeal same within fifteen (15) days of receipt of any adverse notice by service of a Demand for Arbitration

pursuant to PERB's Rules of Procedure. Thereafter the selection of an arbitrator, scheduling of a hearing and proceeding shall be handled consistent with the aforementioned Rules of Procedure.

[Paragraphs B, C and D in this Section shall remain as stated in the current CBA.]

X
Concur
Mimi C. Satter, Esq.

Dissent

X
Concur
Bryan J. Goldberger, Esq.

Dissent

REMAINING ISSUES

The Panel has reviewed in great detail all of the demands of both parties, as well as the extensive and voluminous record in support of those demands. The fact that those demands have not been specifically addressed in this Opinion and Award does not mean that they were not closely studied and considered in the context of terms and benefits by the Panel members. In interest arbitration, as in collective bargaining, not all proposals are resolved, and not all contentions are agreed with. The Panel, in reaching what it has determined to be fair result, has not made an Award on all of the demands submitted by each of the parties.

AWARD ON REMAINING ISSUES

Except as set forth in this Award, the City's demands are hereby rejected.

Except as set forth in this Award, the Union's demands are hereby rejected.

X
Concur
Mimi C. Satter

Dissent

X
Concur
Bryan J. Goldberger, Esq.

Dissent

RETENTION OF JURISDICTION

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

X
Concur
Mimi C. Satter, Esq.

Dissent

X
Concur
Bryan J. Goldberger, Esq.

Dissent

DURATION OF AWARD

Pursuant to the agreement of the parties and the provisions of Civil Service Law Section 209.4(c)(vi) (Taylor Law), this Award is for the period commencing January 1, 2010 through December 31, 2011. The terms of this Award shall be effective on such dates as set forth herein.

IMPLEMENTATION AND PAYMENT OF RETROACTIVITY

The City shall pay retroactivity to each individual who worked during any period on or after January 1, 2010, as soon as possible, but in no event later than 60 calendar days following the date of the signature of the Panel Chair to this Award. The new salary increases shall be implemented as soon as possible, but in no event later than 30 calendar days following the date of the signature of the Panel Chair to this Award.

X
Concur
Mimi C. Satter, Esq.

Dissent

X
Concur
Bryan C. Goldberger, Esq.

Dissent

Accordingly, the Panel, after consideration of the record evidence and after due consideration of the statutory criteria, executes this instrument which is our award.



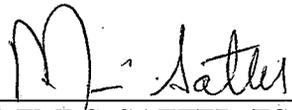
JAY M. SIEGEL, ESQ.
Public Panel Member and Chairman

6/2/14
Date



Bryan C. Goldberger, ESQ.
Employer Panel Member

5/24/14
Date



MIMI C. SATTER, ESQ.
Employee Organization Panel Member

Date

STATE OF NEW YORK)
COUNTY OF PUTNAM) ss. :

On this 2nd day of June 2014 before me personally came and appeared Jay M. Siegel, Esq., to be known and known to me to be the individual described in the foregoing Instrument, and he acknowledged the same to me that he executed the same.



Notary Public

KATHLEEN DUFFETT
Notary Public, State of New York
No. 02DU6128192
Qualified in Putnam County
Commission Expires 06/06/20 17

STATE OF NEW YORK)
COUNTY OF ALBANY) ss. :

On this 24th day of May 2014 before me personally came and appeared Bryan J. Goldberger, Esq. to be known and known to me to be the individual described in the foregoing Instrument, and he acknowledged the same to me that he executed the same.

BRIAN S. KREMER
Notary Public, State of New York
Reg. No. 02KR4998294
Qualified in Albany County
Commission Expires 6/24/14



Notary Public

STATE OF NEW YORK)
COUNTY OF ONONDAGA) ss. :

On this 28th day of May 2014 before me personally came and appeared Mimi C. Satter, Esq. to be known and known to me to be the individual described in the foregoing Instrument, and he acknowledged the same to me that he executed the same.



Notary Public

MARY JO BEAMISH
Notary Public, State of New York
No. 01BE495335
Qualified in Onondaga County
Commission Expires July 10, 20 14

**NEW YORK STATE
PUBLIC EMPLOYMENT RELATIONS BOARD**

In the Matter of Compulsory Interest Arbitration between

**PLATTSBURGH PERMANENT FIREMEN'S
ASSOCIATION, LOCAL 2421,**

**DISSENTING
OPINION**

Employee Organization,

- and -

CITY OF PLATTSBURGH,

Public Employer.

PERB Case No.: IA 2013-12; M2012-305

I hereby respectfully dissent regarding the panel majority's award on wages.

Like most municipalities throughout New York State, the City of Plattsburgh has experienced dramatic increases in pension and health insurance costs while suffering reductions in state aid and mortgage tax receipts. The City must also contend with the recently enacted 2% property tax cap, which places ongoing pressure on the City's ability to raise revenue through increases in the tax levy. The combination of increasing personnel costs and stagnant and/or declining revenue portends an extremely challenging fiscal environment for municipalities in New York State, including the City of Plattsburgh, for the foreseeable future.

The panel's award covers the period January 1, 2010 through December 31, 2011. The wage increases awarded by the panel majority must be carried forward from 2010 and 2011 to the present day and must be paid for by the City in 2014. The City argued, both at the hearing and in its post-hearing brief, that the City's general fund balance will be dangerously low by the

end of 2014. The Union's economic expert, Kevin Decker, testified at the arbitration hearing that the New York State Comptroller recommends that a municipality have a fund balance of at least 5% of annual expenditures and he further testified that he considers a fund balance of less than 5% of annual expenditures to be "dangerously low." Mr. Decker testified that he would consider the City of Plattsburgh's fund balance to be dangerously low if it fell below \$1.15 million based on the City's 2012 expenditures of just under \$23 million.

As set forth in detail in the City's post-hearing brief, the City's projected fund balance as of December 31, 2014, is only \$325,919. The projected fund balance does not include the cost of the wage increases awarded by the panel majority. Using the criteria articulated by the Union's own economic expert, the City's general fund balance is now, and most certainly will continue to be, "dangerously low."

In light of the status of the City's general fund balance in 2014, I simply cannot support raises of 2% for 2010 and 2011 for the members of the firefighters' bargaining unit. The award will further erode the City's fund balance, jeopardizing the City's ability to provide essential services for its residents. Furthermore, in the not-so-distant future, the increased costs resulting from this award may require the City to consider reductions in personnel. Significantly, the firefighters have a no-layoff clause in their collective bargaining agreement, meaning that any required staffing reductions would most likely fall upon other City employees, not firefighters.

Another important factor to consider in determining an appropriate award on wages is what the City has done with its other bargaining units and non-represented employees. The award accurately recites what other City employees have, or have not, received since 2010, and I believe that information is extremely relevant to an appropriate determination by the Panel on the issue of wages. In view of the relatively low salary increases received by other City employees, I

believe that increases of 2% per year for the firefighters, who are able to have second careers and incomes due to their City work schedule, are simply too high.

While I believe the panel considered the evidence presented by the parties in good faith, I disagree with the majority's determination on wages. In these extremely challenging economic times for municipalities, I believe that an interest arbitration panel has an even greater responsibility to consider the legacy its Award leaves behind. Because I believe that the totality of the record evidence supports a lesser wage increase than that awarded by the panel majority, I respectfully dissent.

Date: May 27, 2014

Respectfully submitted,

Bryan J. Goldberger
Employer Panel Member

NEW YORK STATE
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of Compulsory Interest Arbitration Between

PLATTSBURGH PERMANENT FIREMEN'S
ASSOCIATION, LOCAL 2421,

**DISSENTING
OPINION**

Employee Organization,

-and-

CITY OF PLATTSBURGH,

Public Employer.

PERB Case No.: IA 2013-12; M2012-305

For the following reasons I respectfully dissent from the Panel's award regarding vacation accumulation:

The City has never limited the right of Firefighters to accumulate vacation time, which is then paid at retirement. As a result, at least some members of the Department have deferred taking all their vacation entitlement while actively employed in order to have a small "nest egg" when they retire. Ironically, the member of the Fire Department with the greatest accumulation in this regard is the Chief, whose ability to accumulate vacation time will not be impacted in the least by this Award.¹

The majority did two things with respect to vacation accumulation. First, the majority capped vacation accumulation at ten weeks. Given that the wage increase in this Award is at or below that received by other bargaining units within the City for the at-issue time period,

¹Given that the current Chief was appointed to the position within mere months of this Award, one would think the City would have addressed his considerable vacation accumulation at the time of his promotion, if the issue were truly so important to the City.

particularly the Police Department, there was no countervailing benefit to the Union. The cap was simply imposed, presumably in an effort to placate the City. Making this especially unfair, in addition to the lack of a corresponding benefit to the Union and the considerable, unfettered vacation accumulation of the Chief, is the fact that in the most recently negotiated contract between the Police bargaining unit and the City, the right of the Police to accumulate sick leave was actually increased by 700 hours per year.² Thus I dissent respectfully from the imposition of any vacation accumulation cap.

In addition to the foregoing and arguably of greater concern, the cap is being imposed on current members of the bargaining unit who have vacation accumulation that exceeds this newly imposed limit. While employees have a few years to use their accumulated leave, it is the position of the undersigned that the cap, if imposed at all, should have been prospective only. No current member of the bargaining unit who deferred taking vacations with the understanding that he would be able to get the full pay-out at retirement should be prejudiced by being forced to expend weeks saved with the then entirely reasonable expectation these weeks could be a part of the Firefighter's personal retirement planning. Yet that is precisely what the majority has done. For this additionally reason I dissent strongly.

DATED: May 29, 2014

Respectfully submitted,



Mimi C. Satter
Employee Organization Panel Member

²The Firefighters do not begrudge the right of the Police to accumulate leave time, whether vacation or sick. Rather they seek equity with their "brothers in blue."