

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of Interest Arbitration

CONCILIATION

between

Opinion and Award of

City of Syracuse

Public Arbitration Panel

and

Syracuse Firefighters' Association
IAFF Local 280

(PERB Case No. IA2013-018)

* * * * *

Having determined that a dispute continues to exist in negotiations between the City of Syracuse (hereafter City or Employer), and the Syracuse Firefighters' Association (hereafter Union), the Public Employment Relations Board (PERB), pursuant to its authority under the Taylor Law, designated a tripartite Public Arbitration Panel for the purpose of making a just and reasonable determination of the dispute. The designated Panel comprises Robert P. Stamey, Esq., as the Public Employer Panel Member; Charles E. Blitman, Esq., as the Employee Organization Panel Member; and Howard G. Foster as the Public Panel Member and Chairperson.

Following several organizational conference calls among the Panel members, hearings in the matter were held on December 8 and 9, 2014, at the Crowne Plaza Hotel in Syracuse, New York. Testimony was taken from two Employer witnesses and five Union witnesses, and documentary evidence was received from both sides. Upon submission of post-hearing briefs by the parties on January 23, 2015, the record was closed. The Panel met in executive session on February 12, 2015. The Panel's charge under the law is to

make determinations on the submitted issues for the years 2013 and 2014. This Award constitutes the Panel's determination of the issues in dispute.

APPEARANCES

For the Employer:

Colin Leonard, Attorney,
Paul Linnertz, Chief of Fire
Mary Vossler, Budget Director
Derrek Thomas, Personnel Director
Ramona Rabeler, Assistant Corporation Counsel
Kent Young, First Deputy Chief
Stephen Jameko, Senior Analyst

For the Union:

Nathaniel G. Lambright, Attorney,
Paul Motondo, President
Gregory Petersen, Vice President
Eric R. Yetman, Recording Secretary
Michael P. Perotti, Treasurer
John M. Neubauer, Legal Administrator, Blitman and King
Denise L. Smith, Professor, Health and Exercise Science, Skidmore College
Cindy Ell, President, International Firefighters Cancer Foundation
Dennis Sweeney, Training Coordinator, NYS Professional Firefighters
Kevin R. Decker, Economic Consultant

BACKGROUND

The City of Syracuse, with a population of about 145,000 persons, is the urban center of Onondaga County in central New York (population 467,000). The Union represents, for collective-bargaining purposes, about 340 firefighters (in various titles) employed by the City. The current collective bargaining agreement covered the years 2011-2012. The parties initiated negotiations for a successor agreement in December 2012, and they met five times before impasse was declared by the Union in May 2013. On June 21, 2013, the Union petitioned for compulsory interest arbitration, and the panel was designated on July 25, 2013. The arbitration process was held in abeyance pending

litigation before the Public Employment Relations Board. When the legal issues were resolved in early 2014, the arbitration proceeded.

The current interest arbitration is the ninth such proceeding between these parties, out of 22 negotiations that they have held over time. In the current negotiations the parties were unable to reach final agreement on any of the proposals initially submitted by either side, although some proposals have been withdrawn. The Union has advanced 20 proposals to arbitration; the City has offered 4 proposals for the Panel's consideration.

The Taylor Law, as in effect at the time this arbitration was initiated, sets forth four criteria that the Panel is required to consider in making its determination of a "just and reasonable" resolution:

1. 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.
2. The interests and welfare of the public and the financial ability of the public employer to pay.
3. 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.
4. The terms of collective agreements negotiated between the parties in the past providing 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.

The remainder of this Award is organized as follows. We begin with a summary and discussion of the parties' general positions regarding the statutory criteria for a "just and reasonable determination" of the dispute. We then address each of the issues in

contention, setting forth the current contractual provision, if any; the changes or additions sought by the proposing party or parties; and the parties' positions on the proposed changes or additions. The final section includes the analysis and findings of the Panel and the Panel's award.

POSITION OF THE UNION ON THE STATUTORY CRITERIA

The Union contends that the relevant "comparables" for this bargaining unit are the firefighters in the cities of Albany, Buffalo, Rochester, and Yonkers, along with police officers in Syracuse. These are the other cities in New York of comparable size and demographics. Firefighters should not be compared to other public sector workers because (except for police) their jobs are very different, and hence they are not "other employees performing similar services or requiring similar skills under similar working conditions." This distinction has been recognized by previous arbitration panels for firefighter units. Similarly, Syracuse firefighters should not be compared to private-sector workers because those workers do not perform similar services or possess similar skills.

As for the "comparable communities," the Union argues that only cities of similar populations, and thus similar economic and demographic challenges, should be considered. These include Albany, Buffalo, Rochester, and Yonkers. Smaller cities, including those cited by the City, do not face the problems, or have the resources, of the larger cities. The five large cities mark the appropriate boundary for determining comparables. Population is an excellent basis for distinguishing them because population influences a city's organization and methods of operation. Among the five cities, Syracuse is in the middle of the pack in household income, per capita income, unemployment, home values, education, and age distribution. Indeed, prior panels have found that these five cities are comparable, and no

panel involving these parties has included the smaller cities in the universe of comparables. And while it is true that some panels have excluded Yonkers as a "downstate" city, the Union's demands are justified even if Yonkers is excluded and only Albany, Buffalo, and Rochester are considered.

With regard to the "peculiarities" of the profession, the Union notes that its evidence on the hazards of firefighting are uncontroverted in this arbitration. The risks of burns, injuries, and serious diseases are well-documented. In addition, the job requires extensive training, both prior to and during incumbency. A civil-service examination must be passed, and there are rigorous tests of physical ability. Firefighters must master an array of operational rules and requirements, they must be skilled in operating large vehicles, and most have emergency medical training.

The Union asserts that the ability of the City to pay must be weighed against the importance of maintaining the level of public safety necessary to protect the public. Thus the firefighters must be fairly compensated, and indeed given priority over less essential programs. In any event, urges the Union, the City is well able to fund the Union's demands. As shown by the Union's expert witness, Kevin Decker, a four-percent salary increase would require only a modest increase in the property-tax levy, a levy that has barely increased at all over the past five years. Mr. Decker also showed that Syracuse, as the commercial and retail center of the region, receives disproportionate sales-tax revenues, and its state aid has been stable. As a consequence of these resources and sound management, the City has an unrestricted fund balance of 29 percent of expenditures, well above recommended levels. The State Comptroller has not designated Syracuse (as he has other cities) as susceptible to fiscal stress, and the bond-rating agencies give the City high

marks. The City had no effective rebuttal to Mr. Decker's testimony. Indeed, the testimony of the City's Budget Director supported Mr. Decker's and the Union's picture of the City's resources and focused instead on expenditures.

Finally, with regard to past negotiations, the Union contends that there was a decades-long history of parity between the firefighters and police officers, which was broken in 2002 when the Union accepted a wage freeze and the elimination of "vault pay" in exchange for a new pension benefit. For the next few years, parity was acknowledged, but in 2011 the firefighters accepted an unpopular contract, which included increases in health-insurance contributions, in order to avoid staffing cuts. The result is that the Union's members continue to lag the PBA in various compensation measures.

POSITION OF THE EMPLOYER ON THE STATUTORY CRITERIA

The City contends that the proper universe of comparable communities includes several upstate cities in addition to Albany, Buffalo, and Rochester. The law does not specify that comparable communities should be determined by population alone. As previous panels have found, while population is one relevant basis for comparison, so are location, economic conditions, density, and labor-market conditions. By these measures, the appropriable comparables also include Schenectady, Utica, Niagara Falls, Troy, Binghamton, and Rome. Indeed, if population were the only measure of comparability, Rome (population 33,000) is closer to Syracuse than Buffalo. By such measures as per capita income, household income, home values, and living costs, Syracuse is closer to several of the smaller cities than it is to the larger ones. The same is true of such non-economic comparisons as population density, housing density, and firefighters per 1,000 residents. If Albany, Buffalo, Rochester and Syracuse were the most comparable group,

they would be clustered at relevant data points, but they are not. The ten upstate cities have been recognized as the proper comparables in previous arbitrations involving the City. As for Yonkers, the data show that this downstate city, with double the average income and population density and quintuple the average housing value, is not remotely comparable to Syracuse.

As for ability to pay, argues the City, the Union's demands would be excessive even if the City were flush with cash. But it is not flush with cash; it is, in fact, in a precarious spot, and there is no basis for the premise that the firefighters deserve compensation increases beyond those received by all other City employees. Syracuse is not a wealthy city, and its population is poor, tax-burdened, and declining. Its school system is fiscally dependent. Its revenue stream comes mainly from three sources: sales tax, property tax, and state aid. Sales-tax receipts are contingent on the State's approving an additional 1 percent every two years, and there is no evidence that consumer spending is increasing in the local economy. Property taxes generated for the City (as opposed to the school district) have been flat, and an unusually large percentage of property in Syracuse is tax-exempt. Even the Union's expert acknowledged that taxable assessed property values have decreased over the past two years. Raising property taxes is not a solution. And while the City has increasingly depended on state aid to fund its obligations, this is a revenue stream that the City cannot control, and it cannot be the basis for an award from the Panel. Although the Union suggests dipping into the City's fund balance to pay for wage increases, this is contrary to general accounting practices.

The only remaining source of funds for wage increases, asserts the City, is the expenditure side of the budget, and that is constrained by large fixed costs and

skyrocketing fringe-benefit costs, most of which are health insurance and pensions. The firefighters currently enjoy health-insurance benefits surpassing those of most of the comparables, and while the costs have grown exponentially, the employee's share has grown incrementally. Retirement costs for firefighters have increased by 138 percent since 2007, outstripping the costs for the much larger group of civilian City workers. Thus any short-term relief that may be forthcoming on the revenue side will only go to pay for rising fringe-benefit costs. The foregoing picture, notes the City, is corroborated by the State Comptroller's 2013 fiscal profile of Syracuse, which concludes that the City's fiscal situation is critical.

With respect to the other statutory criteria, the City recognizes that Syracuse firefighters have a hazardous job, but in recognition of that they already receive higher compensation than other City employees. Also, the hazards faced by this bargaining unit are less than those in cities like Buffalo and Rochester, with their greater land area, larger populations, greater density, and relatively smaller workforces. And as for past agreements, the record shows that firefighters have historically received higher wage increases than other City employees. Although the Union received no increases in 2011-2012, that was true of all City employees, and while parity with police was once a consideration in interest arbitrations, arbitrators have not consistently held that parity must control. Indeed, the firefighters received the 443(f) retirement benefit (final average salary) in 2002, and although the PBA has regularly asked for the same benefit since then, they have not received it. Nor do most of the firefighter units in the comparable universe have it. And although there was some resistance among firefighters to the 2011-2012 agreement, both

parties entered into it with eyes wide open. In this regard the Panel should look to the future and not the past.

SUMMARY OF THE ISSUES

1. Wages

Appendix A of the CBA provides two salary schedules, one for employees hired before July 1, 2011, and the other for those hired on or after July 1, 2011. In both schedules the starting pay is \$39,296 and top firefighter pay is \$58,515. The pay of captains (\$71,644) and district chiefs (\$77,299) is the same in both schedules. The difference is that firefighters hired after July 1, 2011, require an additional year to get to the top, with adjustments to the intermediate steps. The Union proposes to increase all salaries by 6 percent as of January 1, 2013, and another 6 percent as of January 1, 2014. The City proposes across-the-board increases of 2 percent in each of the two years.

The Union contends that while starting salaries in Syracuse are higher than in Albany, Buffalo, and Rochester, total compensation at the top step, where most firefighters are, lags substantially behind the comparables. Even if Yonkers is excluded from the analysis, Syracuse would still need an 8 percent pay increase to reach the average top-grade firefighter salary in Albany, Rochester, and Buffalo. The most senior firefighters in Syracuse earn slightly more than those in Albany, but much less than those in Rochester, Buffalo and Yonkers. The salary differences for lieutenants, captains, and district chiefs is even greater. In addition, the salaries of Syracuse firefighters are far less than those of Syracuse police officers throughout their respective careers.

The Union further argues that its wage demand must also be granted because of its members' exposure to hazards; their high qualifications, training and skills; their impact on

public health and safety; the evidence in the record of the City's ability to pay; and the parties' history of parity with police officers. Although the Union agreed to break parity in 2003 in exchange for an enhanced retirement benefit, that agreement amounted to a windfall for the City, the firefighters have already paid for the benefit, and thus parity should be restored. Indeed, the gap between the firefighters and police has only grown since 2003.

The City contends that the 2 percent increases it has proposed are fair and reasonable, as Syracuse wages are in line with the appropriate comparable universe. At the top step, Syracuse firefighters in 2012 were paid more than those in five of the comparables, including Albany. Captains were paid more than those in seven other cities. That firefighters in Buffalo and Rochester earn more is reasonable, since their workload is greater and their staffing ratio is thinner. Moreover, the Union's comparisons are flawed, in that it uses different snapshots in time to compare "total compensation," and then uses a measure of "total compensation" that excludes significant elements of compensation, such as overtime and health insurance. The analysis also ignores tradeoffs that may have been made in the past to account for the selective portions of compensation included. The City's evidence is straightforward: comparisons of base salary at the entry level, top step, and captain rate. That evidence shows that Syracuse firefighters are in line with their peers.

The City further argues that its proposal is in line with contract settlements or awards in the ten-city universe. With one exception (Schenectady), firefighters in all upstate cities have received 2 percent or less for 2013 and 2014. There is no support in the comparables for the Union's demand of 6 percent, or even the 4 percent used in Mr.

Decker's analysis. In addition, any comparison must recognize that Syracuse firefighters receive superior health-insurance benefits.

Finally, asserts the City, it is appropriate (and indeed prescribed in the statutory criteria) to compare wages in this unit with those of other public and private employees. In particular, firefighters should be compared with other City employees, who have received 2 percent increases for 2013 and 2014, and whose wages were frozen in 2011 and 2012. From 1987 to 2014, firefighters have outpaced all other City employees except police. They are also well compensated when compared to the average private sector employees.

2. Policy on GML §207-a

Appendix C of the CBA contains a negotiated procedure for the implementation of GML §207-a benefits, which includes a sunset provision as of December 31, 2012. In 2013, the parties executed a memorandum of agreement (MOA) to revive the expired procedure "until a new procedure can be negotiated." In this arbitration the Union seeks two modifications in the procedure: (a) limiting the medical release that the City may demand to "those documents and/or records associated with the injury"; and (b) removing the current standard (based on the CPLR) by which an arbitrator may review a denial of benefits, thus leaving the standard to the arbitrator.

The Union argues that the City should not be permitted to review unrelated and possibly confidential medical records whenever a member wishes to take advantage of a statutory benefit. On the review standard, the current standard is nearly impossible to meet, and thus a member may be denied benefits even if there is overwhelming evidence that he or she is entitled to them. Hence the policy should allow both parties to advocate to the arbitrator for the appropriate standard of review.

The **City** argues that what the Union is seeking is a *de novo* review of the Fire Chief's determination, rather than a determination of whether the Chief's decision was arbitrary or capricious. Yet the Union has presented no evidence to support this change. The Department's operations have in fact become safer over time, and there have been only two challenges to the Chief's determination, one of which was successful. Further, the MOA between the parties provides that the current procedure stays in place until changes are *negotiated*, not imposed by an arbitration Panel.

3. Funeral or Bereavement Leave

Section 21.2 of the CBA provides for three days of bereavement leave in the event of the death of one of a list of family members. The Union seeks to increase the period of leave to four days, and to add brother-in-law and sister-in-law to the list of covered family members.

The **Union** contends that since firefighters work a four-day shift, the proposed change would appropriately allow a member to take off an entire "trick" to deal with a family death. Further, the City has agreed to cover brothers-in-law and sisters-in-law of PBA members, as have departments in comparable cities.

The **City** argues that the current 3-day policy is equivalent to or better than that in several comparable cities. Moreover, in the past three years only 5 of 72 firefighters who took bereavement leave asked for another day to be covered by personal leave. With respect to adding family members, there is already a broad bereavement provision, and there is no justification for a further extension.

4. Vault Pay

Vault pay is an accrued benefit that the Union exchanged in a previous agreement for another benefit. Although the accruals stopped, the previously accrued monies were preserved until the member's final year of service. The Union now proposes allowing a member to request the payout at any time.

The City contends that the current policy is necessary to limit the financial impact of the payout in any one year, and to make it predictable. The Union made a tradeoff when it agreed to the current procedure, but the current proposal includes no such tradeoff.

5. Extra Pay for Emergency Medical Certifications

Section 21.25 of the CBA requires members to maintain their status as a Certified First Responder, with training and testing provided by the City. There is no requirement for higher levels of training, and there is no extra pay associated with such certifications. The Union proposes extra pay for members with various certifications, ranging from 1 percent of salary for Certified First Responders to 5 percent for Paramedics.

The Union notes that many firefighters have obtained (and paid for) advanced certifications on their own initiative, and they provide an invaluable service to the citizens. Further, other departments provide their EMTs with extra pay.

The City argues that, while it recognizes the value of these credentials, it is constrained by its financial situation. As proposed by the Union, this is a very expensive benefit that the City cannot afford. Not all the comparables provide the benefit at all, and the ones that do have much lower payments.

6. **Twenty-Four Hour Shifts**

The CBA does not address the issue of a firefighter's working a 24-hour shift, but the policy of the Department precludes it. The Union proposes a new provision allowing a firefighter to work 24 hours as long as there is a break before the next shift begins.

The **Union** asserts that working 24 hour hours is common in the fire service, and firefighters are not restricted from having second jobs after a regular shift is over. Even the Chief acknowledged that he works as a volunteer firefighter after his regular work shift at the City. For its part, the **City** argues that this is an operational issue that the Panel should avoid, since working a straight 24 hours raises the serious question of fatigue.

7. **Night-Shift Differential**

Section 12.4 of the CBA provides a pay differential of \$0.40 for hours worked from 4:00 p.m. to midnight and \$0.50 for hours worked from midnight to 8:00 a.m. The Union proposes to increase these differentials to \$0.50 and \$0.60, respectively, and that the differential be changed to a percentage.

The **Union** argues that a higher differential will compensate for the inconvenience of working evening hours. Moreover, the City has agreed to a much higher differential for the PBA, and the current differential is lower than that in Rochester. The **City** contends that the Union's proposal is not supported by the comparables. Few other cities provide any night differential. Further, unlike other employees, firefighters receive their normal pay while they are sleeping. There is no basis for paying them extra for this time.

8. Personal-Day Carryover

Section 21.5 of the CBA provides two or three personal days (depending on the shift), two of which may be carried over from one year to the next. The Union proposes that an unlimited number of days be eligible for carryover.

The **Union** states that the current provision does not allow firefighters the maximum ability to use personal days, which are an earned benefit, for important unscheduled events, such as family illness. The City allows the PBA to use sick days for family illness. The **City** argues that the Union's proposal is not supported by the comparables. The current arrangement is a sensible accommodation of competing interests.

9. Shift-Schedule Modifications

Section 14.3 of the CBA provides that modifications to work schedules must be discussed by a committee. The Union would add that the schedules may not be changed except by agreement of both parties.

The **Union** claims that although the City has not indicated any intent to modify the schedule, any such modifications should be subject to joint agreement, especially since members have built their lives around the current schedule. The **City** argues that this proposal undermines the City's right to schedule its employees as provided by the Taylor Law. It would therefore be inappropriate for the Panel to impose this demand.

10. Management Rights

Article 17 of the CBA is the Management Rights clause. The Union proposes to add a sentence: "Notwithstanding the above, any management right possessed by the City and the Fire Chief are subject to the terms of this Labor Agreement and the provisions of the laws of the State of New York, including the Taylor Law."

The **Union** contends that the City has regularly stated that it can implement changes in employment conditions without negotiations, and the Union has had to challenge these actions with PERB. Although the Union has prevailed in these actions, it seeks to avoid future litigation before PERB. The **City** argues that the change is duplicative and unnecessary, and such proposals are better suited to negotiations than imposition by an arbitration panel.

11. Hazard Pay

The CBA contains no provision on hazard pay. The Union proposes a clause stating that whenever a shift is staffed with fewer than 73 firefighters, for each position not staffed the firefighters on that shift will receive hazard pay in an amount equivalent to the cost of employing a full-time firefighter.

The **Union** argues that the Department is currently staffing its shifts with 73 firefighters (including those at the airport). That is a reduction from 95 firefighters in 1974, 85 in 1984, 80 in 1994, and 75 in 2004. Over this period the number of alarms to which the Department has responded has grown from 7,002 to more than 28,000. Most recently, the Department's reorganization, in which a fire station was closed, has greatly increased the hazards of the job. With staffing of 73, if there is more than one fire in the City, there will be only a handful of firefighters to protect the remainder of the City. As hazards to members have grown exponentially, they should be compensated if the City increases them even more by reducing staffing.

The **City** argues that this proposal is a thinly-veiled minimum-manning provision, which is a non-mandatory subject of bargaining. The parties actually had a minimum-manning clause, which sunset in 2012, and which provided for 73 firefighters per shift.

The Chief has now determined that the Department can operate safely with 69 firefighters. The Union's proposal is a creative substitute for the minimum-manning clause, but it is still non-mandatory. Even though PERB does not agree with this argument, the proposal should be rejected nevertheless because it is not supported by the comparables. Further, the fact that these jobs are hazardous is already reflected in the pay rates. In any event, the evidence shows that the hazards of the job are declining. There is no justification for "hazard pay" under these circumstances.

12. Jury Duty

Section 21.14 of the CBA provides that an employee will not suffer any economic loss for attending jury duty. The Union seeks to add a sentence stating that if the firefighter is scheduled to work the night shift on a day when he/she is required to report for jury duty, he/she will have the shift off.

The **Union** argues that it is simply looking for the City to follow the law. This is moreover the same benefit that is provided to the PBA. The **City** asserts that the proposal is unsupported by comparables. The current agreement gives time off when the members is actually required to fulfill the jury obligation, a commonsense practice.

13. Life Insurance

Section 15.1 of the CBA provides \$25,000 of term life insurance to all members. The Union proposes to increase the coverage to \$50,000.

The **Union** notes that many firefighters are sole breadwinners, and that the City's earlier proposals included an increase in life insurance to \$50,000. The **City** now states, however, that it cannot afford this benefit on top of the wage increases and other economic improvements sought by the Union.

14. Reopener Clause

Section 21.3 of the CBA provides that if, during the term of the Agreement, the PBA receives a general wage increase, the Union may reopen negotiations on salary. The Union proposes replacing the phrase "general wage increase" with "any quantifiable economic benefit whatsoever."

The **Union** notes that it and the PBA have a long history of parity, and the current language could be argued by the City as not covering economic benefits that might be awarded to the PBA in lieu of wages. The proposed change does not require the City to agree to parity but only to negotiate with the Union over it.

The **City** argues that the Union's proposal is not supported by any of the comparables. Moreover, the proposed language could relate to any number of non-mandatory subjects of bargaining, and it would raise the possibility of constantly reopening and renegotiating over minor benefits.

15. Charging Overtime

Section 12.1 of the CBA provides that any overtime of more than four hours will be charged to the member for the purposes of overtime equalization. The Union proposes to charge all overtime for this purpose.

The **Union** contends that with some overtime not charged, certain members receive a disproportionate amount by being requested to work on a routine and regular basis on details of four hours or less. This situation should be corrected by charging all overtime. The **City** argues that the Union has presented no substantive evidence in support of this proposal.

16. Sick-Leave Incentive

Section 11.4 of the CBA provides a payment of \$150 for every four-month period in which a firefighter does not use any sick days. The Union proposes to increase the payment to \$700 per trimester.

The **Union** argues that the improved benefits will provide incentives for firefighters to maintain their health and will result in savings for the City. The City recently agreed with the PBA to change the payment period to three months and the payment to \$300 per quarter. The **City** notes that the proposal amounts to a huge percentage increase in the benefit, and is unsupported by the comparables. Most of them provide no sick leave incentive, and the ones that provide it do so at much lower levels.

17. Racquetball Courts and Gym Memberships

In 2012, a firefighter was injured while playing racquetball while on duty. The City denied the requested GML 207-a benefits on the ground that the injury did not occur in the performance of official duties. The Union grieved this action, and the City closed the racquetball courts. Subsequently, Arbitrator Markowitz sustained the GML 207-a grievance on past-practice grounds, finding that benefits had in the past been granted for injuries while exercising, indicating that exercising had been considered a job duty. He did not rule on whether the Chief has the power to decide what is included in a firefighter's job duties. Following this arbitration, the Chief issued a memo stating that exercising is *not* a job duty. The Union now seeks a new provision requiring that the courts be reopened and the addition of a \$500 stipend for gym memberships.

The **Union** contends that the record contains abundant evidence on the benefits of fitness. The opportunity for firefighters to exercise on the racquetball courts is vital for their

safety, as this type of exercise more closely simulates firefighting than does a workout on exercise machines. The gym memberships would also further the important goal of firefighter fitness.

The **City** notes that none of the comparables provides a gym allowance in any amount. The City already provides exercise equipment at its firehouses, which is consistent with practice elsewhere. The Union has offered no evidence to support the proposed stipend. As for the racquetball courts, the City argues that the exercise facilities already provided address the issue raised by this proposal.

18. GML Benefit for Injury While Exercising

Pursuant to the above, the **Union** proposes new language providing that any firefighter injured while exercising on duty is eligible for GML 207-a benefits. Although the Union believes that such a benefit is required by law, it seeks contract language in order to avoid future litigation. The **City** contends that GML 207-a is intended to provide benefits to firefighters "injured in the performance of their duties" as members of a special class. The Union now proposes to expand the benefits to a new class of people. There is no support in the comparables for this unprecedented benefit, and it should be rejected.

19. Vacation Buyback

Section 9.4 of the CBA provides that a firefighter may "sell back" some vacation time at the time vacation picks are made, with the City having the right to reduce or eliminate the benefit. The Union proposes to eliminate this clause as the parties have been unable to agree on its implementation.

The **Union** argues that in the current situation the clause is superfluous. The **City** asserts that the Union has offered no basis for its proposal, and there is therefore no reason for the Panel to alter the Agreement.

20. Health-Care Insurance Contribution by Employee

Under the current Agreement, firefighters contribute \$45 per month for single coverage and \$75 per month for family coverage. The City proposes increasing these amounts in steps to \$130 per month for single coverage and \$260 per month for family coverage.

The **City** contends that it is necessary to recognize the ever-increasing cost of health-insurance benefits. Increasing the contributions is of vital importance to the City. The City pays more to provide health insurance to its employees than it collects in property taxes, and it is essential that employees help pay the costs that are spiraling out of control with meaningful contributions. Moreover, the comparables support the proposal for an increase in contributions. The firefighters pay less than almost all the bargaining units in the City, including the PBA. In other cities, although some grandfathered firefighters have no-pay options, contribution amounts dwarf the current ones in Syracuse. It is necessary for the Panel to protect the interests of all City residents by awarding the City's proposal.

The **Union** argues that no change in the current contribution is warranted given the City's strong financial condition, the Union's lower salaries compared to Buffalo, Rochester and Albany and to members of the PBA, and the hazards faced by firefighters every day. The Union agreed to the current rates in 2011, but the other units in the City did not follow. And although the other units have now agreed to higher contributions, most of them pay far less than what the City is proposing. The City is thus demanding that the

firefighters again pay more than almost everyone else, thus increasing the gap in compensation between the firefighters and police. Accordingly, the City's proposal should be rejected by the Panel.

21. Dental Insurance Contribution by Employee

Under the current Agreement, firefighters contribute \$8.35 per month for single coverage and \$16.52 per month for family coverage. The City proposes to raise these contributions to \$16.75 for single coverage and \$33.00 for family coverage.

The **City** argues that it is reasonable for members to contribute slightly more toward dental insurance, and it notes that Albany currently has no dental insurance for its employees. The **Union** asserts the firefighters' current contributions are the same as those for all other bargaining units in the City, and the City's proposal would have them paying much more than Buffalo or Rochester.

22. Holiday Pay

Section 8.1 of the CBA lists 13 holidays for which firefighters receive holiday pay. The City proposes that when a firefighter is out of work for more than 50 days for an off-duty injury, holidays occurring after that day will not be paid.

The **City** contends that its proposal will provide cost savings by not paying for services not rendered. There is no rationale for paying holiday pay for a non-work-related injury, and under the proposal the change kicks in only after 50 days. It therefore should be accepted by the Panel.

The **Union** argues that holiday pay is given to all firefighters regardless of whether they are scheduled to work. The pay is considered part of the overall compensation

package and should not be reduced when a firefighter is ill or injured. The City's proposal should be rejected.

23. Sick Bank

Section 21.15 of the CBA provides for a sick bank. Under this provision, benefits are determined by a Sick Leave Board, the members of which are appointed by the Union President. If the Fire Chief subsequently determines that a grant of benefits is not in compliance with the rules, he may reject it, in which case it is referred to a named arbitrator. The City proposes a change that would give the Chief the authority to accept or deny applications, still subject to review by the arbitrator.

The City states that the proposed change is reasonable and should be accepted. The Union notes that the benefits in question are sick days that have been earned by unit members, not extra days allocated by the City. It argues that the Chief already has a voice in the review process, which has not been abused. There is no evidence that the current system is not working well, and thus the proposal should be rejected.

DISCUSSION AND FINDINGS OF PANEL

The Panel has considered the parties' arguments in respect to the statutory criteria. Regarding terms and conditions of employment in "comparable communities," both sides make valid points. The Union's emphasis on the larger cities in upstate New York has cogency, as these cities are in many respects the most "like" Syracuse in terms of the economic, demographic, and political environments within which firefighters do their jobs. At the same time, the City is persuasive in arguing that population is not the only metric that makes communities comparable, and even with respect to population the point at which a community becomes non-comparable is not a scientific determination. Indeed, both

sides adduce previous arbitrations in which panels have determined that the list of comparables supports their views. We also note that none of the previous panels agreed with the Union that Yonkers should be included. We concur that Yonkers is so different from the other cities that it should not be considered further.

The finding here is that the group of comparable cities is broader than the three cities on which the Union focuses, but that is to say only that the smaller cities are to some degree relevant. These would include upstate cities of at least 50,000 population: Schenectady, Utica, Niagara Falls and Troy. But it is important to stress that relevance is not the same as weight, and here we are persuaded by the Union's argument that Buffalo, Rochester and Albany are more "like" Syracuse than the smaller cities and thus should carry disproportionate *weight* in comparing Syracuse with other fire departments. In addition, we agree with the Union that for present purposes the comparables should also include the Syracuse Police Department (although not strictly speaking a comparable *community*), given the historic affinities between police officers and firefighters in most places. These are both, after all, groups of employees of the same City who provide public-safety services, with their attendant challenges and risks.

With respect to "the interests and welfare of the public and the financial ability of the public employer to pay," we are cognizant that the public interest is served by providing firefighters with wages and working conditions befitting the important work they do and sufficient to attract and retain qualified personnel, while at the same time not requiring the citizenry to shoulder an unreasonable burden or to make unreasonable tradeoffs. As for the ability of the public to pay, the Union's argument suggests that the City is flush (relative to providing the economic benefits sought by the Union), while the

City's argument asserts that its resources are strained. The record shows, however, that neither of these descriptions entirely fits the reality, at least with respect to the range of arbitration outcomes that could properly be considered based on the other criteria. In other words, while there is no doubt that Syracuse is facing the same challenges as most Upstate New York cities, there is little evidence that it is in dire straits. Its sales tax revenues are rising, its state aid is steady, and its property tax has been increased only minimally over the past five years. There also appears to be a healthy fund balance. On the expenditure side, while the costs of benefits – primarily pensions and health insurance – have certainly grown in recent years, health costs generally are showing moderation, and pension costs are always uncertain. In short, we do not see in the City's financial situation an inability to pay the compensation enhancements that are awarded below.

Set forth below are the Panel's findings on the issues for which an affirmative award is made. These findings constitute the Panel's disposition of issues that involve changes in the current terms of the Collective Bargaining Agreement. The other issues presented to the Panel have been carefully considered, and its finding is that, with respect to those issues, no change in the Collective Bargaining Agreement should be made for the years covered by this award. These demands are therefore rejected, and no award is made.

Wages

Findings. There is, not surprisingly, a range of firefighter salaries in comparable communities. With respect to the three larger cities that the Union considers the only true upstate comparables, salaries in Syracuse are similar to those in Albany and notably lower than those in Rochester and Buffalo. Salaries in Syracuse are generally higher than those in the smaller upstate cities that the City argues are comparable. For the period covered by

this arbitration, the City of Syracuse has agreed to annual increases of two percent for most of the other bargaining units with which it negotiates, including the police. The record also suggests that increases in the neighborhood of two percent have been the norm in firefighter settlements and arbitrations in upstate New York.

Comparing the salaries of Syracuse firefighters with their police counterparts is complicated by the fact that the two groups also vary considerably in some other elements of compensation. For example, the firefighters enjoy a more generous and more costly pension benefit (final average salary), which was an earlier tradeoff for a forgone wage increase. Firefighters also receive substantially more holiday pay (although the same number of holidays) than do police. On the other hand, the Union cites the City's concurrence in an interest arbitration award for police that provided additional compensatory-time payments. Although the base wages clearly differ, the record does not allow us to determine the aggregate value of firefighter compensation relative to police compensation.

Based on the foregoing findings, we conclude that the base salaries for this bargaining unit should be increased by the same percentage as were other salaries in Syracuse (including police) and in other fire departments across the state, while other enhancements of the compensation package should also be considered on their merits, as indicated below.

Award. All of the salaries in Appendix A, covering the period 1/1/11 to 12/31/12 (page 53 of the CBA), shall be increased by 2.0 percent effective January 1, 2013, and by an additional 2.0 percent effective January 1, 2014.

Policy on GML §207-a

Finding. The reference to *negotiated* changes in the parties' Agreement does not preclude the Panel's consideration of the Union's proposals, once the attempts to negotiate such changes have resulted in impasse. On the substantive issues, the proposal on medical releases has merit, as employee privacy considerations should properly limit access to confidential information that is unrelated to the injury. As for the standard of arbitral review of benefit determinations by the City, the record does not support the change requested by the Union. Accordingly, the language of Section 9 in the current Agreement should not be disturbed.

Award: The following sentence shall be added to the first paragraph of Section 4 of Appendix C of the CBA: "The medical release shall be limited to those documents and/or records that are directly or indirectly associated with the injury." The medical-release form used by the City shall be revised to reflect this limitation. Appendix C of the CBA shall otherwise remain unchanged.

Funeral or Bereavement Leave

Finding. The record does not support the proposition that the current benefit, in terms of bereavement days, is inadequate to meet the needs of most bereaved firefighters, or that it is out of line with comparable departments. On the few occasions when more than three work days have been needed, the time has not been denied, and pay for the time is available through other accrued benefits. However, the inclusion of brothers-in-law and sisters-in-law in the list of family members to whom the benefit applies is not at all uncommon and is on its face appropriate.

Award. Brother-in-law and sister-in-law shall be added to the second paragraph of Section 21.2. Section 21.2 shall otherwise remain unchanged.

Extra Pay for Emergency Medical Certifications

Finding. While stipends for firefighters who hold these credentials are not universal, they are by no means unusual, and there is no dispute that the skills to which the credentials attest provide value to the Department. Obtaining the certifications requires training, some of the cost of which, in both money and time, is borne by the firefighter. Although the Panel is not persuaded that the amounts sought by the Union should be awarded in their entirety, it finds the Union's argument persuasive in principle, and that the stipend should be introduced into the Agreement.

Award. Effective January 1, 2013, a new clause shall be added to the Agreement providing for stipends for emergency medical certifications, as follows:

CFR-D (Certified First Responder Defibrillator)	\$ 200
EMT-D (Emergency Medical Technician Defibrillator)	\$ 500
EMT-I (Emergency Medical Technician Intermediate)	\$ 750
EMT-CC (Emergency Medical Technician Critical Care)	\$1,000
EMT-P (Emergency Medical Technician Paramedic)	\$1,250

The stipend for a certification held during a given year shall be paid in a lump sum by February 1 of the following year. Payment for a certification achieved during the year shall be prorated to the portion of the year during which the certification was held.

Night-Shift Differential

Finding. The increases in the night-shift differential proposed by the Union are actually considerably lower than those recently provided to police officers in Syracuse.

Given the differentials that have been agreed to for police, amounting to an additional \$.50 per hour over two years, we find that a single increase of \$.25 is reasonable for this bargaining unit.

Award. Section 12.4 of the CBA shall be modified to provide a differential of \$.65 for work performed between 4:00 p.m. and midnight, and a differential of \$.75 for work performed between midnight and 8:00 a.m., both effective January 1, 2013.

Shift-Schedule Modifications

Finding. The Union's argument regarding the centrality of work schedules to the needs and interests of employees is persuasive. Changes in such a major term and condition of employment, like other important terms and conditions of employment, should be subject to the same joint determination.

Award. Section 14.3 of the CBA shall be modified to read as follows: "Changes in the current shift schedule shall not be made until they are discussed with the joint standing committee and agreed to by the parties or awarded by an arbitration panel.

Life Insurance

Finding. At one point in the negotiations both parties had proposals to increase the life insurance provided to firefighters to \$50,000. The cost of this increased benefit is modest.

Award. The first sentence of Section 15.1 of the CBA shall be modified to read: "The City shall provide \$50,000 of term life insurance for each active member of the bargaining unit." The increase in life-insurance coverage shall be effected as soon as practicable.

Charging Overtime

Finding. The parties have established procedures aimed at insuring that overtime opportunities are distributed evenly. That purpose is compromised when certain assigned overtime is not counted.

Award. Replace the second paragraph of Section 12.1 of the CBA with the following:

Chargeable Overtime: All overtime opportunities, including refusals thereof, are chargeable. All overtime worked will be charged to that member in his district log. All overtime will be documented and maintained by both the District Chief's and Deputy Chief's level. The purpose is to keep overtime more equal and transparent across the department.

Sick-Leave Incentive

Finding. Although the current sick-leave incentive is not out of line with comparable fire departments (several of which do not have this benefit at all), it is substantially lower than the benefit provided to police officers in Syracuse. The Panel therefore sees justification for increasing the level of the incentive, although by a lower amount than has been demanded by the Union and by a lower amount than the police received.

Award. The third sentence of Section 11.4 of the CBA shall be revised to read as follows: "The economic benefit for each four-month block shall be \$300.00 for zero days off," and the fourth sentence shall be deleted.

Vacation Buyback

Finding. As the parties have been unable to negotiate an implementation procedure for this buyback, the provision has apparently become a dead letter, and we see no reason for keeping it in the Agreement. If the parties decide that there is mutual benefit in having a vacation buyback, they can simply add it back.

Award. Section 9.4 of the CBA shall be deleted.

Health-Care Insurance Contribution by Employee

Finding. While the firefighters may have in the past paid more for their health insurance than other City employees, that is no longer the case, and in 2014 most City employees carried higher contributions. Furthermore, although it is not always possible to compare plans, the evidence on comparables suggests that other fire departments require higher contributions than does Syracuse. We find, accordingly, that the contributions by members of this bargaining unit should be increased, although not by the magnitude proposed by the City.

Award. The employee contribution to health insurance shall be increased to \$65 per month for single coverage and to \$130 per month for family coverage, effective October 1, 2014.

Award on Remaining Demands

Any demands and/or terms other than those specifically modified or set forth in this Award are hereby denied.

Duration

This Award, except as otherwise stated, will be effective 12:01 a.m. on January 1, 2013, and will remain effective until 12:00 midnight on December 31, 2014, and continue thereafter until such time that a future Agreement is executed by the parties or a future interest-arbitration award is issued.

Retroactivity and Implementation

This Award shall be implemented as soon as practicable. Retroactivity shall be paid to any bargaining-unit member who worked during the expired period as soon as

practicable, but no later than June 30, 2015. The Employer shall provide a worksheet to all persons receiving retroactive payments, setting forth how the calculations were made and what they represent. Should retroactive payments not be made by June 30, 2015, then interest shall accrue after that date at the legal rate provided in Section 5004 of the New York CPLR.

The Panel shall retain jurisdiction of this matter for six months following the latest signature below for the sole purpose of resolving any disputes over the implementation of this Award.

Date: 3/23/15

Howard G. Foster

Howard G. Foster
Public Panel Member and Chair

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

Date: 3/24/15

Robert P. Stamey, Esq.
Public Employer Panel Member

reluctantly
I (concur) (do not ~~concur~~) with the above Award.

Date: 3/25/15

Charles E. Blitman
Charles E. Blitman, Esq.
Public Employee Organization Panel Member

STATE OF NEW YORK)
 COUNTY OF ERIE)

SS:

I, Howard G. Foster, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is an Interest Arbitration Award.

March 23, 2015

Howard G. Foster

Howard G. Foster
 Public Panel Member and Chair

Laurie Foster

LAURIE FOSTER
 NOTARY PUBLIC, State of New York
 Qualified in Erie County
 My Commission Expires Dec. 31, 2018

STATE OF NEW YORK)
 COUNTY OF ONONDAGA)

SS:

I, Robert P. Stamey, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is an Interest Arbitration Award.

3/24/2015

Robert P. Stamey

Robert P. Stamey, Esq.
 Public Employer-Panel Member

Catherine E. Carnrike

CATHERINE E. CARNRIKE
 NOTARY PUBLIC-STATE OF NEW YORK
 No. 02CA6112791
 Qualified in Onondaga County
 My Commission Expires July 12, 2016

STATE OF NEW YORK)
 COUNTY OF ONONDAGA)

SS:

I, Charles E. Blitman, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is an Interest Arbitration Award.

3/25/15

Charles E. Blitman

Charles E. Blitman, Esq.
 Employee Organization Panel Member

Rosanne C. Canale

ROSANNE C. CANESTRARE
 NOTARY PUBLIC, STATE OF NEW YORK
 Qualified in Onondaga County No. 4778058
 My Commission Expires Sept. 30, 2018