

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD  
INTEREST ARBITRATION PANEL

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In the Matter of the Interest Arbitration between

THE CITY OF OLEAN, NEW YORK, FIRE DEPARTMENT,

Employer,

- and -

THE OLEAN PROFESSIONAL FIREFIGHTERS,  
ASSOCIATION, IAFF, LOCAL 1796,

Union.

PERB Case No.: IA2013-031, M2012-378  
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**AWARD**

**For the Period:**

**June 1, 2011- May 31, 2013**

BEFORE: Michael S. Lewandowski  
Public Panel Member and Chairman

Frank DeMart  
Employee Organization Panel Member

Joseph L. Braccio, Esq.  
Public Employer Panel Member

APPEARANCES:

For the Employer:  
Jeffrey Swiatek, Esq.  
Hodgson Russ, LLP  
Of Counsel

For the Union  
Tracy D. Sammarco, Esq.  
The Sammarco Law Firm, LLP  
Of Counsel

Pursuant to the provisions contained in Section 209.4 of the Civil Service Law, the undersigned Panel was designated by the Chairman of the New York State Public Employment Relations Board ("PERB") to make a just and reasonable determination of an impasse and dispute between the City of Olean, New York ("City") and the Olean Professional Firefighters Association ("Union"). PERB made this designation by letter dated June 24, 2014.

In arriving at each determination, the Panel has specifically reviewed and considered the following factors, 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 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.

The panel determined that the members of this unit performed the full duties of firefighters as referenced in §209 of the Law.

An arbitration hearing was conducted before the Panel on April 14, 2015 in Olean, New York. The panel received exhibits, contracts, demonstrative evidence and testimony that was admitted into evidence.

Thereafter, the Panel convened in Executive Sessions on April 1, 2016, April 22, 2016 and June 3, 2016. The panel engaged in discussions concerning the issues raised by the parties. While the panel was not able to reach agreement in total, the majority of the

panel was able to agree to each proposal outlined below meaning that for all but the final issue (to reject all other proposals) each issue received the vote of two of the three panel members.

It is necessary for the record to reflect that the unit affected by this award is comprised of 36 employees holding firefighting titles.

It is also important for this record to reflect that after filing a petition for Compulsory Interest Arbitration and after the hearing referred to above, the parties reached agreement for a collective bargaining agreement for years following the period covered by this Award (2013 - 2016). This put the panel in the unique position of having to construct an Award that makes sense in light of the data presented at the hearing and the parties Agreement to go forward in the years after this Award. Having said the foregoing, the Panel focused mainly on the data presented at the hearing for consideration.

The panel considered the proposed list of comparable employers submitted by both the Firefighters and the City and concluded that it could accept neither list. Instead the panel reached its positions considering both lists utilizing data contained in both lists where the panel deemed appropriate but the majority of the panel in light

of the unique circumstances, where the other City units including the Police Benevolent Association accepted zero salary increases for the years this Award covers, chose to rely heavily on comparisons that included the other City units.

The majority of the panel agreed that the data presented shows the City has the ability to pay the items awarded here and lacks the ability to pay, without undue cost to the taxpayers of the City, the items rejected here. The panel's determination reflects that to provide the rejected items would impose an undue cost and burden on the taxpayers.

**ABILITY TO PAY:** The majority of the Panel concluded that the data presented shows the City facing severe financial constraints. The per capita income of City residents is \$22,838, which is approximately \$10,000 less than the State average income. The unemployment rate in the City of Olean has ranged from 6.9% to 9.10% in the past several years which provides evidence of a limited taxpayer base. The assessed value of the property in the City is currently \$489,448,616, a decrease of nearly \$3.2 million over the last two years. The City expenses are higher than its revenues and the City's ability to raise revenue has been limited by State measures and a declining economy. The City's dire circumstances ultimately resulted in a "bail out" by the State Legislature in that

the Legislature agreed in 2007 to loan the City \$4.3 million to fund certain deficits. As a result of the foregoing, the City has been subject to strict scrutiny by the State Office of the Comptroller.

Additionally, the City continues to face significant increases in the cost to provide employee benefits such as pensions, Workers Compensation and health insurance. All of these costs have skyrocketed in recent years and they continue to rise. For instance, the City has been advised by its brokers that the annual health insurance premiums will likely increase from 7.5% to 9.5%.

While the data presented by the Union shows that the City has the legal authority to raise taxes and still remain within any Constitutional taxing limits, the majority of the panel rejects the notion that just because the City can tax, the City should tax to the limit. As noted above, the demographics of the City show that this is not a municipality where the residents have incomes adequate to face high levels of increased taxes.

Notwithstanding the foregoing, there is evidence to support the determination the modest benefit increases awarded here. The City is showing a healthy Unassigned General Fund Balance of \$2.78 million and a Total Fund Equity of \$3.2 million at the end of May 2014. Further, much of the reason for the City showing shrinking Fund

Balances is that the City has chosen to transfer significant funds to the Capital Projects Fund.

**COMPARABLES:** The panel could not agree on a list of comparable units however the table below shows that the City's firefighters are not out of line with the salaries offered firefighters in nearby Cities.

CITY	CITY POPULATION	SIZE OF FIREFIGHTERS UNIT	2010 BASE SALARY	2011 BASE SALARY	2012 BASE SALARY	2013 BASE SALARY
Batavia	15,269	38	\$50,728	\$51,996	\$53,295	\$54,628
Olean	14,152	36	\$52,240 — \$56,724	Same	same	same
Dunkirk	12,328	21	\$54,452	same	same	same
Hornell	8,473	22	\$47,811	\$47,811	\$49,245	\$50,230

## AWARD

PERB CASE NO.: IA2013-031; M2012-378

**SALARY:** The majority of the panel agrees that there should be no salary increases during the two-year period before the panel.

The City proposed no increases in base pay in each of the two years covered by this award; 2011-2012 and 2012-2013. The firefighters propose 5% increases in base pay in each of the two years.

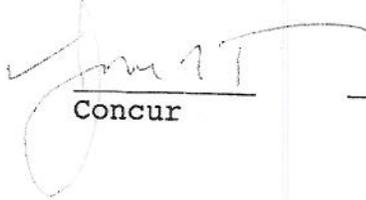
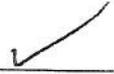
The majority of the panel finds the 10%+ compounded increase the Union proposed is simply be incredible given that the City has endured financial difficulties from which it is just beginning to recover.

Most notable is the fact that during the two-year period under consideration here, the City's other unions agreed to no increases in pay thus the firefighters, if granted an increase here would be the only City bargaining unit to see a pay increase. Further, the panel is aware that after the hearing, the parties entered into an agreement providing salary increases in the years following the period this award covers. To grant a salary increase here would place the City in the untenable position of having to cascade forward thru the three years of increases the parties have already agreed to.

Further, and significantly important is the fact that the City will continue to absorb substantial increases in health insurance cost without passing those increases on to the Firefighters. Also, the Firefighters pay less on a percentage basis for their health insurance coverage than the other City units.

Even considering the factor of comparability to other like bargaining units, the record lacks sufficient evidence to break the internal City unit comparability that exists when the other bargaining units had received no salary increase to base pay for the years under review here. Specifically, when compared to the City of Batavia; a city that is similar in population and size of the Olean fire unit, the base salary paid Olean firefighters (ranging from \$52,240 - \$56,724) fits squarely within the range of base salaries paid Batavia Firefighters (\$51,999 2011 Base Salary; \$53,295 2012 Base Salary; \$54,628 2013 Base Salary). The data before the panel also shows that Olean Firefighters and Batavia Firefighters respond to a comparable number of fire calls.

The picture further favors the City's position when looking at the Dunkirk and Hornell Firefighters base salary figures. Dunkirk Firefighters received no increase in Base Salary for the period 2011 thru 2013, the Base Salary remaining at \$54,452. Hornell Firefighters did get an increase in Base Salary but the resultant raises increased their Base Salary only to \$50,230 in the 2013 salary year; a figure significantly below the salary range in effect for the Olean Firefighters.

 <hr/> Concur	<hr/> Dissent	 <hr/> Joseph L. Braccio Employer Panel Member	6/20/16 Date
<hr/> Concur	 <hr/> Dissent	 <hr/> Frank DeMart Employee Panel Member	6-22-2016 Date

**FAMILY SICK LEAVE:** The Firefighters propose adding a 5-day per year family sick leave benefit to the agreement. The City opposes the benefit.

The majority of the panel favors this proposal with modification. First, the proposal is supported by data that shows that CSEA unit gets to use 5 days of accrued sick leave for family illness and the police unit that gets to use 7 days of sick leave for family illness. Therefore, the 5-days proposed by the Firefighters here is in line with comparable benefits offered other City units.

It is noted that the other units have specific language that restricts the use of sick leave for family illness to those instances where "the personal presence of the employee is necessary to attend to the ill relative. Further, the leave is only for use where the illness involves an "immediate family" member which is defined as "the employee's spouse or significant other, child, parent, grandparent, sister, brother, mother-in-law, father-in-law or a relative residing in the employee's home.

The majority of the panel awards the benefit of the use of 5 days per fiscal year of sick leave for family illness proposed by the Union with the above restrictions and the requirement that "To

qualify for the benefit, an employee must submit a physician's certificate for each instance of leave briefly describing the nature of the family member's illness or injury and that the firefighters presence is necessary to attend to the ill/injured family relative unless at the discretion of the Chief, the circumstances present do not warrant the production of a doctor's certificate. The Chief's decision in this regard shall not be grievable.

The amount of sick leave for family illness/injury purposes is limited to no more than 3 sick leave days within a seven-day period.

<u>          </u> Concur	<u>          </u> Dissent	<u>          </u> Joseph Braccio Employer Panel Member	<u>          </u> Date
			6/17/16
<u>          </u> Concur	<u>          </u> Dissent	<u>          </u> Frank DeMart Employee Panel Member	<u>          </u> Date
			6/22/2016

**MSA ACCOUNT:** The majority of the panel supports increasing the monies paid into the MSA account for each employee by \$100 dollars. This amount while not the full amount requested by the Firefighters brings the Firefighters in line with the CSEA unit thus the data reviewed supports the increase. This benefit increase is not retroactive but is to become effective the date this award is signed.

<u>          </u> Concur	<u>          </u> Dissent	<u>          </u> Joseph Braccio Employer Panel Member	<u>          </u> Date
			6/17/16
<u>          </u> Concur	<u>          </u> Dissent	<u>          </u> Frank DeMart Employee Panel Member	<u>          </u> Date
			6-22-2016

**CLOTHING ALLOWANCE:** The data shows that the Firefighters receive a \$400.00 per year clothing allowance while the Police receive a \$600.00 per year clothing allowance. The Firefighters here propose an increase in the clothing allowance to \$650.00 per year. The City, for fiscal reasons, opposes the request.

The majority of the panel supports increasing the Firefighters clothing allowance to \$600.00 year provided the City is permitted to return to the voucher language contained in Article 12.1.3 of the collective bargaining agreement. This increase provided a significant increase in the clothing allowance and is justified by the data, which shows the Firefighters lagging behind the police. The clothing allowance benefit provided here is not retroactive.

_____	✓ _____	_____	6/17/16
Concur	Dissent	Joseph Braccio Employer Panel Member	Date
_____	_____	_____	6/22/2016
✓ Concur	Dissent	Frank DeMart Employee Panel Member	Date

**ALL OTHER OPEN PROPOSALS:** The majority of the panel deems all other proposals, whether proposed by the Union or the City, to lack sufficient evidence for inclusion in this award.

_____	_____	_____	6/17/16
✓ Concur	Dissent	Joseph Braccio Employer Panel Member	Date
_____	✓ _____	_____	6/22/2016
Concur	Dissent	Frank DeMart Employee Panel Member	Date

**Term of Award :** The duration of this Award shall be June 1, 2011 through May 31, 2013.

**PANEL MEMBER AFFIRMATIONS**

Pursuant to Article 75 of the Civil Practice Law and Rules, I hereby affirm that I executed the foregoing as and for my Award in this matter.

  
 Michael S. Lewandowski  
 Public Panel Member and Chairman

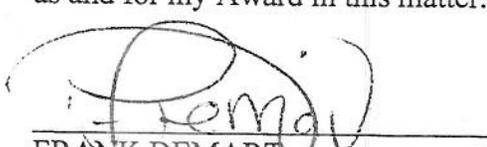
Dated: June 14, 2016

Pursuant to Article 75 of the Civil Practice Law and Rules, I hereby affirm that I executed the foregoing as and for my Award in this matter.

  
 JOSEPH L. BRACCIO, ESQ  
 Employer Panel Member

Dated: 6/21/16

Pursuant to Article 75 of the Civil Practice Law and Rules, I hereby affirm that I executed the foregoing as and for my Award in this matter.

  
 FRANK DEMART  
 Employee Panel Member

Dated: 6/22/2016