

PUBLIC EMPLOYMENT RELATIONS BOARD  
STATE OF NEW YORK

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N. Y. S. PUBLIC EMPLOYMENT  
RELATIONS BOARD  
**RECEIVED**

OCT 15 1975

CONCILIATION

PERB Case Nos. CA-0002/M74-109

In the Matter of the Impasse Between

THE CITY OF AMSTERDAM,

Public Employer,

- and -

LOCAL 294, INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND  
HELPERS OF AMERICA,

Employee Organization.

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OPINION  
AND  
AWARD

Before the Public Arbitration Panel:

- JOHN E. SANDS, Chairman and Public Member
- ELMER GAYDER, Public Employer Member
- J. MICHAEL ROBILOTTO, Employee Organization Member

OPINION

Robert H. Helsby, Chairman of the New York State Public Employment Relations Board, designated us members of the Public Arbitration Panel on July 10, 1975. Pursuant to our authority under Article 14 of the Civil Service Law ("Taylor Law") we conducted hearings on September 4 and 11, 1975 in Albany, New York. Each party had full opportunity to submit testimony under oath as well as documentary evidence and to cross-examine opposing witnesses.

In reaching our conclusions, we have been bound by the standards mandated by Section 209.4 (C) (V) of the Taylor Law. Accordingly, pursuant to subparagraph "d" of the cited section, we have taken into account the Taylor Law's strong policy to encourage parties to negotiate their own settlement without requiring impasse procedures.

We find the fact-finder's award in this case followed the statutory standards and established an over-all cost structure which we have not changed. To vary that structure by increasing or decreasing benefits would only encourage negotiators of future contracts to hold out to impasse on the hope of winning an improved result from some third-party arbitration panel. This would be counter-productive.

Instead, we have by agreement reshuffled benefits proposed by the fact-finder for both sides within the same cost structure to improve the impact of the settlement on both management and labor. Accordingly, in some cases we have granted more money to employees. In other cases, we have counteracted such increases either decreasing money benefits, as in the case of uniform allowances, or providing additional productivity privileges to the employer, as in the case sick leave. In addition, by agreement of the parties, we have included in our award those provisions which the parties themselves adopted during collective bargaining.

As a result, the entire award should be viewed as an integrated whole, with money benefits and productivity improvements serving as the quid pro quo for each other.

By reason of the foregoing, we issue the following:

AWARD

1. TERM

The term covered by this award shall be 2 years, commencing January 1, 1974 and terminating December 31, 1975.

2. OFF-DUTY EMERGENCY RESPONSE

The contract between the parties shall contain the following provisions:

If a member of the Police or Fire Department is injured as a result of any action taken by him during his off-duty hours which would reasonably have been taken by the member under the same circumstances if he had been on active duty, such member shall receive the same rights and benefits in connection with that injury which he would have received had he been on active duty at the time.

3. OUT-OF-TITLE WORK

The parties' agreement shall include the following clause:

Fire personnel who work ten (10) consecutive or twenty-five (25) scattered tours of duty during any twelve month period in a classification higher than that in which they are normally employed shall thereafter be paid at the rate of such higher classification for all days so worked out of title.

4. HOLIDAYS

Article XII of the parties' prior collective bargaining agreement shall be amended to read as follows:

A. Covered employees shall be compensated for eleven (11) paid holidays per year. Such compensation shall be computed on the basis of each employee's regular, straight-time rate of pay for 88 hours and shall be paid in a lump sum to each employee during the first pay period in December of each year.

B. Employees shall work on holidays according to the natural rotation of their schedule and shall receive no extra compensation whether or not they work on any holiday in a given calendar year.

C. For information purposes, the parties intend that the following days comprise the eleven (11) paid holidays referred to paragraph A, above:

New Years Day	Labor Day
Lincoln's Birthday	Columbus Day
Washington's Birthday	Veterans Day
Easter	Thanksgiving Day
Memorial Day	Christmas Day
Independence Day	

5. POLICE CLOTHING ALLOWANCE

Police clothing allowance shall remain at \$150.00 per year as currently provided in the parties' prior collective bargaining agreement.

6. LIFE INSURANCE

Article IX of the parties' prior collective bargaining agreement shall be amended to substitute the following language for line-of-duty life insurance policy benefits:

The city at its own cost and expense shall provide a \$2,000.00 Group Life Insurance Policy for members of the Public Safety Unit on a non-contributory basis.

7. LEAVES

A. Personal Leave

The following language shall be added to the collective bargaining agreement between parties:

Each full-time employee in the bargaining unit shall be entitled to take one day's personal leave with pay to attend to pressing personal matters. Employees must give at least one week's written notice to the Department of intention to use such leave, except in case of dire emergency.

B. Bereavement Leave

Current language of Article VII of the parties' contract with respect to leave or death in the immediate family shall be changed from ". . . a maximum of three (3) days of leave of absence with pay . . ." to read ". . . a maximum of four (4) days leave of absence with pay. . ."

C. Sick Leave

The parties shall eliminate the current language of Article IX of their agreement with respect to sick leave and add a new sub-section to that Article as follows:

(c) Sick Leave

(1) Full-time employees in the bargaining unit shall be entitled to unlimited sick leave for line-of-duty injury or illness in accordance with applicable law.

(2) For non-line-of-duty injury or illness, full time employees in the bargaining unit shall accrue sick leave at the rate of two (2) days per month up to a maximum of 240 days. Sick leave credits shall not be used for retirement purposes.

(3) Full-time bargaining unit employees on the city's payroll as of the date of this award shall, in exchange for losing their current right to unlimited sick leave, be credited with an accrued sick leave entitlement of 240 days.

(4) To avoid abuse of sick leave privileges, the city may, at its own expense, require a covered employee to submit to medical examination for certification of inability to work under the following circumstances:

(a) when an employee has been absent from work on five (5) consecutive work days;

(b) when an employee has a pattern of attendance which suggests unreasonable use of sick leave;

(c) when, during or after a claimed period of illness, the city discovers facts which indicate abuse of sick leave.

(5) An employee who claims sick leave the day before or after a holiday or vacation must submit medical certification of inability to work.

8. WAGES

Annual wages at all steps on the schedule for police and fire personnel in effect December 31, 1973 shall be increased by \$850.00 retroactive to January 1, 1974 and shall be further increased by \$1150.00 retroactive to January 1, 1975. Retroactive payments due by reason of this section shall be made in seniority order and shall be completed by January 31, 1976.

9. FIRE DUTY SCHEDULES

The parties agreement shall be amended to add the following language:

1. The basic work year for firefighters is 2080 hours, or the equivalent of 260 eight-hour days.
2. The city shall arrange work schedules for firefighters on a pattern of 24-hour shifts.

10. AGREED BENEFITS

The parties shall include in their contract the following benefits which they agreed to during collective bargaining:

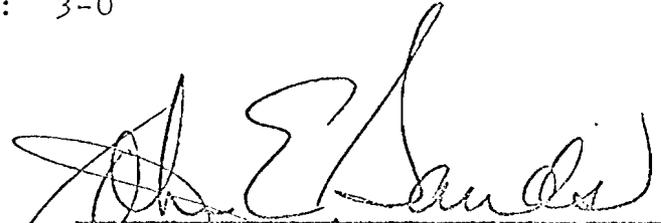
- (a) Replacement of eyeglasses and dentures lost or broken in the line of duty upon approval of Chief.
- (b) Reasonable time for Union Stewards to conduct Union business (after notification to Chief).
- (c) Four hour minimum when called in to work except for court time - compensatory time off for overtime.
- (d) Modification of grievance procedure as to time limits for resolution at each step.
- (e) No requirement of dress uniform for firemen.
- (f) City to make every effort to replace old Fire Department gear such as helmets and boots, etc.
- (g) Firemen to receive three short sleeve shirts for summer wear.
- (h) Establishment of Merit Award Board.
- (i) Payment of vacation pay in advance.
- (j) Uniforms not to be used off duty.
- (k) Retirement pay calculated on basis of final year's salary rather than three year average salary.

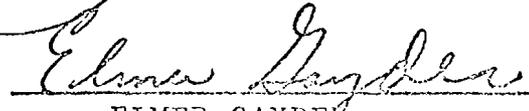
11. VOTE OF PANEL MEMBERS

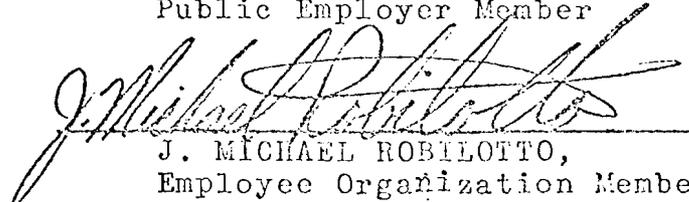
The panel members voted individually on every issue covered by this award. They have adopted each by at least a majority vote. The results of our votes are as follows:

1. Term: 3-0
2. Off Duty Emergency: 2-1 (Gayder)
3. Out of Title: 3-0
4. Holidays: 3-0 (Gayder dissents only as to timing of lump sum payment in December)
5. Police Clothing: 3-0
6. Life Insurance: 2-1 (Gayder)
7. Leaves: 2-1 (Gayder)
8. Wages: 2-1 (Gayder)
9. Fire Duty Schedules: 3-0
10. Agreed Benefits: 3-0

Dated: October 1, 1975  
Schenectady, New York

  
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JOHN E. SANDS,  
Chairman and Public Member

  
\_\_\_\_\_  
ELMER GAYDER,  
Public Employer Member

  
\_\_\_\_\_  
J. MICHAEL ROBILOTTO,  
Employee Organization Member

STATE OF NEW YORK  
COUNTY OF ALBANY

On this *3rd* day of October, 1975, before me personall  
came and appeared JOHN E. SANDS, to me known and known to me to  
be the individual described in and who executed the foregoing  
instrument and he acknowledged to me that he executed the same.

*Kay S. Koss*

KAY S. KOSS  
Notary Public, State of New York  
Qualified in Rensselaer County  
My Commission Expires March 30, 1977

STATE OF NEW YORK  
COUNTY OF ALBANY

On this *1st* day of October, 1975, before me personally  
came and appeared ELMER GAYDER, to me known and known to me to  
be the individual described in and who executed the foregoing  
instrument and he acknowledged to me that he executed the same.

*John E. Sands*

JOHN ELIOT SANDS  
Notary Public, State of New York  
No. 31-3448103  
Qualified in ~~New York~~ County  
*Schenectady*  
Commission Expires March 30, 1977

STATE OF NEW YORK  
COUNTY OF ALBANY

On this *1st* day of October, 1975, before me personally  
came and appeared J. MICHAEL ROBILOTTO, to me known and known to me to  
be the individual described in and who executed the foregoing instrument  
and he acknowledged to me that he executed the same.

*John E. Sands*

JOHN ELIOT SANDS  
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No. 31-3448103  
Qualified in ~~New York~~ County  
*Schenectady*  
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PUBLIC EMPLOYMENT RELATIONS BOARD  
STATE OF NEW YORK

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IN THE MATTER OF THE IMPASSE BETWEEN  
THE CITY OF AMSTERDAM,

Public Employer,

-and-

LOCAL 294, INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND  
HELPERS OF AMERICA,

Employee Organization

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MINORITY REPORT BY ELMER GAYDER  
PUBLIC EMPLOYER MEMBER

This minority report is submitted so that both parties may receive the benefit of my thinking as a member of the arbitration panel and since I was the only member casting a dissenting vote on some of the issues.

I am of the opinion that arbitration is the attempt to settle a dispute by an impartial body in an impartial manner hearing both sides and then making a fair determination. My oath signed at the start of these proceedings stated I would faithfully and fairly make such a determination. I regret that in my opinion this procedure was not followed. It was brought to my attention early and as the opinion of the panel states, "the purpose of arbitration is to carry out the fact-finder's award to discourage parties going into arbitration." It was further brought to my attention after we had discussed some four (4) minor issues that there would be no need to discuss any more issues since I would be out voted two to one.

NY State Employment  
RELATIONS BOARD  
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OCT 14 1975

PERB CASE NOS.  
CA-0002/474-109

If the purpose of arbitration is to approve the fact-finder's report then there is no need for arbitration and such a procedure becomes a waste of money and time.

During the course of the arbitration hearing both parties spent much time in submitting proof and exhibits. None of these matters were discussed and considered in determining the final report. There was much concentration on the question of the economy of the City which I felt was very important in determining the question of wage increases. Here again there was no discussion as to this very important matter. I would like to make note here that it was my thinking further, that since the City had carried out negotiations which were completed with other units and a determination was made in this year that there would only be a 5% increase, the police and firemen should have been given a similar increase and not the one agreed upon by the majority. I further objected to the maneuver that deducted \$50.00 from the fact finder's clothing allowance and applied it to the second year wage increase a maneuver I objected to vigorously. The matters of life insurance and leaves also are items which affect the ability of the City to pay and it make sense for me to note that at a time when all municipal governments have money problems we should not go out of our way to make them worse, especially in view of the fact that it did not appear that the present plan created any problems among the employees

I wish to make note of the fact that I sought help in the preparation of this report from the Corporation Counsel of the City of Amsterdam in view of the fact that I was the employer representative on this panel. He gave such help at my request but that was only with regard to the preparation of this report. The contents stated in this report are mine and are set forth at my request.

Summing up this report I submit that the objections to the panel's determination are based upon the following:

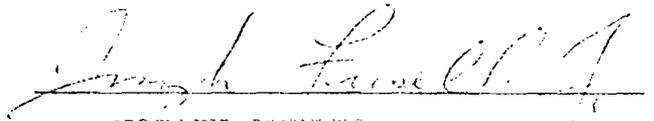
1. The purpose of arbitration in my judgment is not to blindly accept the fact-finder's report in order to discourage arbitration;
2. The panel did not consider the facts presented by the parties before making a determination;
3. The panel did not follow any of the recommendations made under the Taylor Law;
4. In my judgment the majority of the panel arrived at conclusions before giving consideration to facts before it;
5. The panel among other things gave no consideration to the employer's ability to pay.

DATED: OCTOBER 10, 1975

  
ELMER GAYDER  
Public Employer, Member

STATE OF NEW YORK       : SS.:  
COUNTY OF MONTGOMERY   :

On this 10<sup>th</sup> day of October, 1975, before me personally came and appeared ELMER GAYDER, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

  
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NOTARY PUBLIC  
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PUBLIC EMPLOYMENT RELATIONS BOARD  
STATE OF NEW YORK

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IN THE MATTER OF THE IMPASSE BETWEEN  
THE CITY OF AMSTERDAM,

Public Employer,

-and-

LOCAL 294, INTERNATIONAL BROTHERHOOD OF  
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NEW YORK PUBLIC EMPLOYMENT  
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**COMPLAINT**

PERB CASE NOS.

CA-0002/M74-109

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2. The panel did not consider the facts presented by the parties before making a determination;
3. The panel did not follow any of the recommendations made under the Taylor Law;
4. In my judgment the majority of the panel arrived at conclusions before giving consideration to facts before it;
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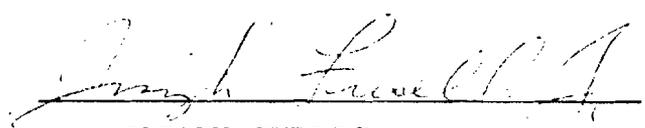
DATED: OCTOBER 10, 1975



ELMER GAYDER  
Public Employer, Member

STATE OF NEW YORK        :: SS.:  
COUNTY OF MONTGOMERY    :

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NOTARY PUBLIC  
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