

Preliminary Statement

This is a proceeding pursuant to Section 209.4(c) of Article 14 of the New York Civil Service Law. The Public Arbitration Panel held a hearing at Albany, New York on August 5 and 6, 1975, at which the parties were afforded full opportunity to present oral and written evidence, cross-examine witnesses, provide oral argument and otherwise support their respective positions. The Panel thereafter met in executive session, on August 11, 1975.

Unless otherwise expressly noted, this Opinion represents the views of the undersigned chairman of the Public Arbitration Panel and does not necessarily represent the views of either of the other Panel Members. The Determination represents the action of at least a majority of the Panel.

General Observations

The parties' last collective bargaining agreement expired on October 31, 1974. During the negotiations for a new agreement, to be effective as of November 1, 1974, the parties reached understandings as to a number of items. By stipulation of the parties, those understandings are included in the Panel's Determination.

The remaining items in dispute were the subject of a Fact Finding proceeding before Professor John E. Sands. His Findings of Fact and Recommendations were issued on June 9, 1975, but not accepted by either party. Professor Sands Findings and Recommendations were, however, brought to the attention of this Panel and have been considered by it along with the other evidence presented

at the hearing on August 5 and 6, 1975.

The evidence before the Panel is voluminous. In general, though not exclusively, the Union in its presentation stressed comparisons between the salaries ^{/and} other benefits of the Albany firefighters and those of employees of other public and private employers, and the cost-of-living. The City, for its part, stressed budgetary, fiscal, and tax considerations, and pointed out the fact that approximately two-thirds of Albany's property valuation is wholly tax-exempt. Moreover, much of that exempt property, particularly that utilized for State and County functions, draws freely on City services, including fire service.

Both parties, in the chairman's opinion, have a valid point. In terms of overall compensation, the Albany firefighters lag markedly. The \$9,880 salary of an Albany Top Grade Firefighter (reached after three years' service) is lower than that for New York State cities of roughly comparable population, with the differential averaging in the range of \$2,000 to \$3,000. In terms of pensions, the Albany's firefighters' plan, which essentially provides the option of retirement at 50% of pay at age 55 with 25 years' service, compares unfavorably with plans for comparable cities, the great majority of which permit retirement at 50% of pay after 20 years' service, without minimum age requirement. Similarly, the 10 paid holidays enjoyed by the Albany firefighters are one less than what appears to be the norm in the State. Moreover, the increase in cost-of-living has been dramatic--for the most recent year ending in April 1975, the increase in the consumer price

index was 10.2% for the nation and 8.5% for the New York -north-eastern New Jersey area, and that increase has hit particularly hard at moderate income families.

The City, as noted above, must service but may not tax a very significant proportion of its valued property. Its tax rate is constantly increasing. While it has made a determined effort to reduce its General Fund deficit--which was incurred in substantial part because of legal mandates and restrictions over which it had no control, debt service still accounts for roughly one-quarter of the City's budget. Furthermore, while living costs have been spiralling upward, so has unemployment, and business has experienced a serious recession, with the result that the tax burden represents an increasing hardship for many. Nevertheless, the chairman believes, on the basis of considerable evidence in the record, that the City has the ability to finance all improvements mandated by the Panel.

The Panel has the difficult responsibility to do justice to the conflicting but very real difficulties in which the parties find themselves. In the chairman's opinion, this means that priority must be given to improving the basic income of the Albany firefighters, with at least some inroad being made on the unfavorable salary differential that exists vis-a-vis firefighters in comparable communities. At the same time, consideration of some other important items must of necessity be deferred.

The Specific Items in Dispute

A. Salaries

There is, as noted above, a wide gap between the salary levels

of Albany firefighters and those of firefighters in comparable communities. Most recently, one nearby city, Troy, which had a lower salary, \$9,200, for Top Grade Firefighters, agreed to increase that rate by \$3,000, to \$12,200, over the two years of a new contract. However, that increase was accompanied by the union agreeing to revised shift schedules sought by the employer.

The chairman believes that the Albany scale should move toward that of Troy, taking into account that the Albany shift schedules are similar to those now abandoned in Troy, and that the parties in the present dispute have not bargained as to any schedule changes. Such salary improvements in Albany would involve some warranted "catch-up" for the Albany firefighters, and this, of course, presents a problem of overall cost. Precipitate cost increase can be avoided, however, by spreading salary increases more evenly over the new contract period. This in itself is a persuasive reason for a new contract term of two years. On that basis, the chairman believes that the Albany scale should be increased by 8% as of November 1, 1974, by 5.5% as of November 1, 1975, and by a further 5.5% as of May 1, 1976. The result would be an overall increase of 19%, with the present salary of the Top Grade Firefighter, \$9,880, going to \$10,670 as of November 1, 1974, to \$11,255 as of November 1, 1975, and to \$11,874 as of May 1, 1976. The foregoing increases can be justified in terms both of comparability with similarly situated firefighters and in terms of recent and projected increases in the cost of living. It should be noted, however, that the total cost of these salary increases over two years would not be greater than the increases recommended by the Fact Finder.

B. Retirement, Death Benefits and Longevity

A case can be made, on a comparability basis, for pension improvements. Nevertheless, the cost of the present Union proposals would be over \$950,000. At the same time the benefit to the employees would not be immediate. Given the present immediate needs of the firefighters, and the economic problems of the City, the chairman believes that this demand should not be granted. He reaches the same conclusion as to the Union's proposals with respect to death benefits and longevity.

C. Holidays

The Albany firefighters now receive ten holidays at straight time--they seek one additional holiday, Election Day. The Fact Finder so recommended.

The great majority of comparable communities provide eleven or more [/]holidays. This is not a high cost item--the evidence indicates that the annual cost to the City would be approximately \$9,000. In terms of morale, this appears to be an important benefit. The chairman believes that it should be granted.

The Union, as to holidays, also seeks to increase the pay for time worked on a holiday from straight time to time and-a-half. This demand, unlike the demand for an additional holiday, is not supported by comparability data. For that reason, and for the reasons stated under General Observations above, the chairman believes that this demand should not be granted.

D. Vacations

The union seeks 21 calendar days' vacation after three years'

service. At present Albany firefighters receive 16 days for their first five years of service and 21 days thereafter. The Union notes that the last agreement reduced from five to three years the period during which firefighters progressed to Top Grade, and it argues that vacation benefits should be commensurate with that progression. The Fact Finder recommended that this demand be granted.

The comparability picture is not as clear on this item as it is on holidays. Furthermore, the City in the long run will incur greater costs in implementing what will be a significantly higher salary scale as of the last period of the new contract. Since the chairman sees no necessary exact correlation between firefighters grade and vacation benefits, he believes that this demand should not be granted.

E. Out-of-Grade Pay

The present agreement provides retroactive pay at the higher rate after a firefighter has worked more than four hours in a higher grade on his second consecutive working day. The Union seeks retroactive out-of-grade pay when a man has worked more than three hours on any day.

The Fact Finder recommended such out-of-grade pay after four hours. The chairman believes this is a sound position. An employee should be compensated for work actually performed, particularly when it involves significant supervisory responsibilities. Moreover, this is not necessarily a substantial cost item, since careful scheduling can minimize, at least to some extent, out-of-grade work.

The chairman believes this demand should be granted.

F. Dental Plans

The Union seeks to have the City pay the full cost of the present dental plan--it now pays the full cost for covered employees and 50% of the cost of family coverage. The City seeks to eliminate this benefit entirely. The Fact Finder recommended that there be no change in the present funding arrangement.

The Union contends that the cost of its demand would be minimal because the cost of the present plan has proven to be considerably less than projected--with a resulting "windfall" to the City. This is a factor to be considered, but on other grounds, comparability in particular, the Union's case is not strong. On the other hand, the plan represents an important benefit for moderate income individuals and families. The chairman believes that there should be no change in the present benefit, and accordingly that neither the City's nor the Union's demand should be granted.

G. Minimum Manning

The Union seeks in its revised demand to require a minimum of four men on each piece of apparatus. The Fact Finder did not recommend this proposal.

While the present practice is normally to assign four men to each piece of apparatus, absences and other factors apparently result in an average of 3.5 men actually being so utilized. The Union introduced evidence showing that the cost of providing full

four-man coverage, either through addition of new personnel or by overtime, would be in the vicinity of \$85,000.

This is a complex problem, that has pervasive ramifications going to cost and resulting size and efficacy of the fire service, safety, and work load. It is the kind of problem that professional firefighters and administrators can address in negotiations more effectively than can any Arbitration Panel. Unfortunately, the matter has not been explored in these terms in the negotiations for the contract that is the subject of this proceeding. Under the present circumstances the chairman does not believe that the Union's demand should be granted. He does believe that it deserves to be explored in depth in negotiations for a successor contract.

H. Personal Leave

The last agreement provided that "Each fireman shall be entitled to personal leave ^{/time to be} granted at the discretion of the Chief.". The Union seeks three personal leave days as a matter of right. The Fact Finder did not recommend this proposal.

The Union contends that personal leave days are being arbitrarily denied. This Panel is not, however, well equipped to address such issues, which can far better be dealt with in a grievance procedure. Furthermore, the union has not made a persuasive comparability case for additional days as a matter of right, nor does the Panel have cost data relating to this proposal. The chairman believes that the demand should not be granted.

I. Leave of Absence for Union Representatives

The last contract provided paid release time for up to four members of the Union's negotiating team for purposes of contract negotiations with the City. The Union seeks paid released time for all "union officers, representatives and delegates" in connection with negotiations, grievance handling, union meetings, conferences and conventions. The Fact Finder recommended paid time for four designated Union representatives for purposes of negotiations and grievance handling.

Because the Union's proposal as phrased is open-ended, it is impossible adequately to calculate the cost or evaluate its impact on fire service efficiency. The chairman believes that it should not be granted. The Fact Finder has recommended a limited provision regarding time-off for union representatives that goes beyond the last contract only insofar as grievance handling is concerned. However, the parties have already reached an understanding, in their negotiations concerning a grievance procedure, with respect to released time for grievants and Union representatives. The chairman believes that this understanding, coupled with last contract's provision for released time for four members of the Union's negotiating team, adequately serves the Union's needs. Accordingly, he does not believe that the present proposal should be granted either in its original form or as recommended by the Fact Finder.

J. Arbitration

The parties have already reached an understanding as to a grievance procedure. They are in dispute, however, as to the Union's proposal for final and binding arbitration by an impartial

arbitrator. The Fact Finder recommended that there be provision for such arbitration.

The chairman believes that there is a persuasive case for final and binding arbitration. Arbitration is provided for in the overwhelming majority of collective bargaining agreements in the private sector and in a very large number of public sector agreements. It would seem, in terms of cost, expedition and expertise, to be a desirable alternative to court litigation. In this connection it should be noted that absent an exclusive arbitration clause, any agreement entered into pursuant to Article 14 of the Civil Service Law may be enforced ^{/directly} by judicial proceedings. The arbitrator believes that this proposal should be granted, and that the parties' agreement should contain the following provision recommended by the Fact Finder:

(a) Either party may submit to binding arbitration pursuant to the then-obtaining Voluntary Arbitration Rules and Procedures of the New York State Public Employment Relations Board an unresolved grievance involving a claimed violation, misinterpretation or misapplication of the terms of this agreement. No such grievance may be submitted to arbitration which has not been fully processed through the last step of the grievance procedure.

(b) The parties shall share equally the arbitrators' fees and expenses.

(c) The arbitrator shall have no power to add to, subtract from or modify the terms of this agreement.

K. Duration of Agreement

The City seeks a one-year contract. The Union originally sought a two-year contract, but presented its case before the

Fact Finder on the basis of a one-year contract. The Fact Finder recommended two years.

The chairman has referred above to the need for a two year period to effectuate significant salary improvements. In addition, the fact is that a one year contract would expire in several months, with the resulting need to resume bargaining almost immediately. This hardly seems desirable--the parties should have an opportunity to work under their new agreement for some significant period prior to negotiating a successor contract. Accordingly, the chairman believes that the new agreement should cover the period from November 1, 1974 to and including October 31, 1976.

Determination

A majority of the Public Arbitration Panel determines as follows:

1. The parties' understandings as to the following items, represented by the Union's Proposed Agreement, at the cited articles, pages and sections thereof, shall be incorporated in their collective bargaining agreement for the period beginning November 1, 1974:

Page 1, Preamble, paragraphs 3 and 4.

Page 2, Article I - Recognition
Sections A and B

Page 3, Article II - Holidays
Section C

Page 5, Article VI - Seniority
Sections A, B, C, D, E, and F

Page 7, Article VII - Verbal Orders
Section A.

Article IX - Leave of Absence
Sections A, B, and C.

Page 8, Article X - Vacations
Sections A and B.

Page 8, Article XI -
Sections A and B (subject to the parties'
agreeing on the definition of the term
"personal household" as used in Section
A.

Page 9, Article XII - Top Grade Firefighter
Sections A and B.

Page 11, Article XVIII - Grievance Procedure
Sections A, B, D, E, and F

Page 16, Article XXI - Labor-Management Committee
Section A.

Article XXII - Uniforms
Section A.

Article XXIII - Safety Committee
Section A.

Page 17, Article XXIV - Bulletin Boards
Section A.

Article XXV - Medical Attention
Section A.

Article XXVI - Contracts
Section A.

2. The salary scale of Albany firefighters shall be increased by 8% as of November 1, 1974; by a further 5.5% as of November 1, 1975; and by a further 5.5% as of May 1, 1976.

3. There shall be no change in retirement or death benefits. The Union's proposal for longevity increments is rejected.

4. There shall be one additional holiday, Election Day, but there shall be no change in the rate of pay for work on a holiday.

5. There shall be no change in eligibility for vacation benefits.

6. A fireman shall be compensated retroactively at the higher rate for any hours worked out-of-grade on any day in which he works four or more hours out-of-grade.

7. There shall be no change in the dental plan or the funding thereof.

8. The Union's proposal with respect to minimum manning is rejected.

9. There shall be no change with respect to personal leave time.

10. There shall be no change with respect to paid released time for Union representatives, except as the parties have agreed as noted in paragraph 1 above.

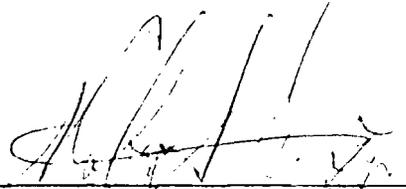
11. The parties new agreement for the period beginning November 1, 1974 shall provide for final and binding arbitration in the language set forth in the Opinion accompanying this determination.

12. The parties agreement for the period beginning November 1, 1974 shall be effective from that date to and including October 31, 1976.

13. Except as changed in accordance with this Determination, the terms of the parties' last agreement, for the period ending October 31, 1974, shall be incorporated in their agreement for the period from November 1, 1974 to and including October 31, 1976.


Daniel G. Collins, Chairman

I concur as to paragraphs 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 but dissent as to paragraph 2, ^{with section number 11} (My dissenting opinion as to paragraph 2 is set forth in the appendix hereto.)



Robert Lyman, Public-Employer
Appointed Member

I concur as to paragraphs 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13 but dissent as to paragraph 8. (My dissenting opinion as to paragraph 8 is set forth in the appendix hereto.)



John Przekop, Employee-Organization
Appointed Member

Dated: September // , 1975

Appendix

Dissenting Opinion of Mr. Lyman as to Paragraph 2

As the employee of the Public Arbitration Panel, appointed by the Public Employment Relations Board to examine into the matter of the impasse between the City of Albany, New York, and the Albany Permanent Professional Fire Fighters Association, I find that I must dissent from the majority decision with regard to salaries in this dispute.

The majority assert that the pay raise for the members of the Fire Department of the City of Albany, will amount to 19% over the period of November 1974 to October 31, 1977. I must point out that this is in error. The raise retroactive is 8%. On top of that must be added two increments of 5-1/2% based on the increased amount of money derived by the prior 5-1/2% and 8%. This is actually a compounding of the pay raise and would amount to 20% plus in pay raises.

It is my opinion that the majority have not considered the drastic financial plight that the City of Albany finds itself in. During the hearings the City presented evidence by its Comptroller and by the Mayor that the general fund deficit of the City was at that time \$11,332,393. They further estimated that given this year's budget figures there would be no opportunity to reduce that general fund deficit which has in the past been defrayed by the floating of Serial Bonds. In comparison one can see that the general fund deficit of the City of Albany percentage wise exceeds that of the City of New York. Presently New York City's current budget is \$12,300,000.00 the current budget deficit is in the sum of \$2,800,000.00 or a percentage of the current budget of 22.764%. In Albany the current budget is \$35,435,590.00, the current deficit is \$11,332,393.00, 31.979% of the current budget.

The most glaring fact to be derived from a pay raise in the magnitude contemplated by the majority is to look at the cost in dollars to the City to fund such a raise. Based on the current budget the salaries for police and fire are currently \$8,461,000.00. For purposes of my discussion I must consider, I feel, that the police department which is currently in negotiations with the City, and which at any time, I believe, will go to arbitration must be factored into this settlement. Surely the City will have a difficult time in any arbitration in giving the policemen less than has been awarded the firemen by this panel.

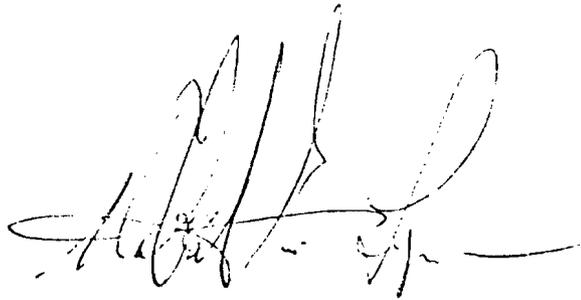
As a result, the increase in dollars that the City must budget as of November 1, 1975 amounts to the following. Based on 8% of \$8,461,000.00, as of November 1, 1975 the 8% retroactive for the year November 1, 1974 to October 31, 1975 equals \$676,000.00. That amount is carried over again for the upcoming year so it must be added again. In addition, the increase of 5-1/2% payable on November 1, 1975 on the foregoing amounts totals \$502,000.00. Then as of May 1, 1976 must be added the additional increment of 5-1/2% or \$265,000.00. This totals in the 1975-1976 budget year an amount equal to \$2,119,000.00. If we factor on top of that an approximate 25% for fringe benefits you must add an additional \$529,000.00 for a grand total of \$2,648,000.00. Thereafter, assuming no growth in the budget for the police and fire salaries, in the budget year 1976-1977 you must raise an additional \$1,708,000.00 plus fringe benefits amounting to \$429,000.00 for a total that year of \$2,137,000.00.

These numbers are significant in that the police and fire department budgets from the major area of budget expense for the City of Albany.

In computing what these raises would mean as far as the tax rate is concerned in the City of Albany it would mean an additional \$9.00 per thousand on assessed valuation in the first year of the agreement and \$7.00 per thousand of assessed valuation in the second year.

I believe the interest of the tax payer is that the monies they pay for police and fire service are already excessive and that increased amounts of money are not popular with tax payers in this area.

As a result, and in view of the foregoing reasons I hereby respectfully dissent from the opinion of the majority as to this item.

A handwritten signature in black ink, appearing to be 'H. H. H.', written in a cursive style with a long horizontal line extending to the right.

Appendix

Dissenting Opinion of Mr. Przekob as to Paragraph 8

Minimum Manning: The Union had requested a section in the contract that would have provided for four men per apparatus.

Originally the Union had requested 73 men per platoon but with the decision by the P.E.R.B. Board in Niagara Falls that platoon manning was not negotiable but manning per piece of apparatus for safety reasons was negotiable.

In the light of the Board's ruling, the Union then presented evidence and witnesses to the effect that the proper number of fire fighters on a piece of apparatus was a safety factor.

The witness (Tom Flynn, Exec. V.P. of N.Y.S. Professional Fire Fighters) explained that inadequate manning level results in very low efficiency, which includes safety. The safety consideration is the overall well being of the fire fighter. If a fire fighter is tired out, he can get hurt just by being dead tired. Our witness, with evidence from the Underwriter, the Article Public Employee Safety Guide by the National Safety Council and the City Manager's Publication, Fire Administration testified that safety is a part of efficiency and that when efficiency is present, an automatic result is safety.

As the employee member of this panel, I find that the interrelationship of safety and efficiency is consistent with the dual responsibility of the City and the Fire Department. A responsibility to the community to extinguish fires as quickly as possible and rescue citizens caught in buildings and a concomitant responsibility to the fire fighters to use them prudently and not jeopardize their safety.

The Public Employee Safety Guide by the National Safety Council states the number of men assigned to fire apparatus should be five and never less than four.

Over the past few years, manpower on fire apparatus has been greatly reduced. This could be one of the causes of constantly climbing accident rates. The most common injuries at a fire are back injuries, strains and sprains.

By reducing manpower on apparatus, fire departments have increased the work loads on individuals.

The lifting and pulling in fire and rescue situations cannot be done with safety when operating with limited manpower.

Another piece of evidence the 1973 edition of the Municipal Grading Schedule, under which the fire protection facilities of cities are measured and classified, states the manning requirements under the Grading Schedule are generally six fire fighters on an engine or ladder company.

Any city official contemplating a reduction of fire department personnel should take a long hard look at their responsibility to the tax payer and their employees. A wrong decision could mean an increased loss of life, higher per capita fire costs, increased insurance rates and less than first class fire protection for the taxpayers.

In closing, I wish to repeat an Editorial from Fire Engineering which covers all the areas that proper manning provides.

Maybe someday industry will come up with a machine that can crawl around a smoke filled apartment looking under beds and opening closets. Maybe someday industry will come up with a machine that will be able to climb an 85 foot aerial and hand wrestle a hysterical or semi-conscious woman out of a top floor window. Maybe, too, there will be an automated gadget that can take a hose line up a twisting stairway, free the butts that get stuck at the turns, force a door and then open the nozzle on the fire.

Like the infantryman's, the fire fighters' job will always involve "hand labor." You just can't get along without it. Any general who called for elimination of the infantryman because of a beefed-up artillery or air force, would be quietly retired on a Section-8. Yet there are "generals" in the fire service (almost invariably self-appointed) who would reduce the number of the infantrymen of civilian life - the fire fighters - to the point where they become completely non-effective.

These "generals" regularly call for a reduction in alarm response because most alarms come in by phone and the civilian on the other end of the phone can tell the dispatcher just exactly what the fire is. The civilian frequently is a 13 year old girl babysitting or an excited housewife, who reports a fire in an automobile and immediately hangs up. A simple fire, right? One pumper and two men can do the job. But suppose the automobile is one of two in a garage that is incorporated into a ten room house with four sleeping children on the top floor.

Needless to say, we know of no civilians who have the training and experience to determine the requirements of a fire.

Good fire protection is expensive and on top of this, it requires intelligence, skill and courage. Why should our communities settle for anything less?

All articles presented by the Union point out the need for a section in the contract on minimum manning as a safety factor for the fire fighter. P.E.R.B. Board has ruled that it is a negotiable item and I think there is a need and place for this justified article in this contract.

