

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Arbitration between

The City of White Plains

and

Professional Fire Fighters Association,
Inc., Local 274, IAFF

Case Nos. CA-0098; M75-937

ADJUTANT
~~CONCILIATOR~~
Opinion of the
Chairman

AWARD of
Panel

Arbitration Panel:

Public Panel Member: Maurice C. Benewitz

City-appointed Arbitrator: Bertrand B. Pogrebin
Esq., Attorney

Association-appointed Arbitrator:
Thomas P. Flynn

Appearances:

For the City: Terence M. O'Neill, Esq., Attorney

For the Union: John Przekop, Representative

These parties were bound by a Collective Bargaining Agreement which expired on June 30, 1975 (Joint Ex. 1). An impasse developed and Fact Finder Erwin M. Blant was appointed by the Public Employment Relations Board on October 14, 1975. This Fact Finder issued a Report and Recommendations on May 28, 1976 (Joint Ex. 2). The Association filed a Petition for Arbitration on June 28, 1976; on July 7, 1976, the City filed a

Response. A panel was appointed by the PERB on November 30, 1976. The Public Panel Member was Jonathan Liebowitz, Esq. Mr. Liebowitz withdrew as Chairman on March 23, 1977. The undersigned Public Panel Member was appointed by the PERB to replace Mr. Liebowitz on April 13, 1977.

Hearings were held at the City of White Plains on June 20 and June 21, 1977. Briefs were filed by the parties on July 22, 1977. An Executive Session was held on July 28, 1977 at Manhasset, New York. A unanimous decision was arrived at by the Panel of Arbitrators and is embodied in this Award. However the Opinion is the product of the Chairman who is solely responsible for the discussion set forth herein.

The Open Issues

The following issues were presented to the Panel for "a just and reasonable determination" pursuant to the provisions of the Civil Service Law, Section 209.4.

1. Old contract extended except as modified
(with the exceptions of Article XVIII
and Article LIII.)
2. Term of Agreement
3. Personal Leave
4. Holidays
5. Salaries
6. Uniform Allowance
7. Education
8. Overtime and Recall
9. Grievance Procedure
10. Severance Pay
11. Out of Title Pay
12. Welfare Fund
13. Longevity
14. Life Insurance
15. Benefit Plans
16. Retroactivity

The Criteria Set Forth in Section 209.4

The New York Civil Service Law as amended mandates that the Panel consider and apply the following criteria in coming to its decision:

The public arbitration panel shall make a just and reasonable determination of the matters in dispute. In arriving at such determination, the panel may, but shall not be bound to, adopt any recommendation made by the fact-finder, and shall, so far as it deems them applicable, take into consideration the following and any other relevant circumstances:

- 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. such other factors which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment.

The Panel considered all evidence concerning the above criteria. It also considered all other evidence and argument offered by the parties at the hearings and in the Briefs.

Background Information

This unit serves a City of over 50,000 residents. The unit is composed of all Department members except the Chief and consists of 5 Deputy Chiefs, 29 Lieutenants and 138 Fire Fighters (City Ex. 2).

There was a difference of opinion between the parties as to the proper standards of comparison between this and other units in Westchester County. The Fire Fighters wished to consider all contiguous communities including a larger city, Yonkers, and a number of smaller communities. The City, on the other hand, argued that the best standard of comparison is to the cities of New Rochelle and Mount Vernon.

Fact Finder Blant (at pp. 21 and 22) did consider the wages paid in a number of contiguous communities in arriving at his finding on wages. At no place in his Report did he indicate any agreement that the proper standard of comparison is limited to Mount Vernon and New Rochelle.

On the other hand, the City, in its Brief, showed that many other Westchester Fact Finders and/or Chairmen of Impasse Panels constituted under Section 209.4, came to a different conclusion. Fact Finder Herbert Marx, in a recent New Rochelle Police impasse found that the proper comparison for that city was to Mount Vernon and White Plains. Arbitrator Jonas Silver,

in a New Rochelle case, found the same standard. Arbitrator Theodore Lang came to the same conclusion in dealing with the White Plains Police interest arbitration. And Arbitrator Thomas F. Carey came to the same conclusion in a New Rochelle Fire Fighters interest arbitration.

This Chairman has also concluded that while the circumstances in Yonkers and in contiguous Towns and Villages is of some interest, the most appropriate comparisons for White Plains units are to the related units in Mount Vernon and New Rochelle. The three communities have similar governmental structure, taxing limitations, size and geographical location.

The Fire Fighters have presented impressive evidence of the ability of the City of White Plains to pay the costs of any Award which is found to be otherwise justified on the basis of cost of living or comparisons to other communities. Witness Edward J. Fennell, Comptroller of the City of Cohoes analyzed the last City balance sheet available, through June 30, 1976, and the City's Bond Prospectus issued in June, 1977. He found substantial proofs that the City's revenues exceeded its expenditures and that there was a surplus with sufficient cash so that \$6.2 million of the surplus could be appropriated. While the City showed that some of that surplus is already earmarked for future use, a substantial proportion remains. It is not

true that the City's expenditures are shown to exceed its revenues by the drawing down of the surplus (which is largely attributable to a sale of surplus land to the State). Analysis of a number of the City expenditures made since the land sale shows that many of these expenditures were for capital purposes. Furthermore, in at least 3 of the past 4 years the City tax rate has decreased. It is fair to conclude even if some of the surplus was drawn down against current expenditures, that had the tax rate been maintained, the draw down either would not have occurred or would have occurred at a lesser rate.

The City has considerable ability to tax within its constitutional tax margin as well. For the current fiscal year, the Fire Fighter analysis of City documents (not disputed as to fact, although disputed as to interpretation) shows \$6,169,340 of taxing power remaining of a constitutional total of \$19,248,629.

The Chairman concludes that there is room to finance increases. He agrees that the fact of fiscal health is not a sufficient reason to recommend increases which are not otherwise justified.

The Issues

The decision of the Panel as to the open issues must now be set forth. Matters which are largely non-economic are discussed first. We shall then consider the economic issues.

Non-Economic Issues

1. The parties have agreed that except for Article XVIII and

Article LIII of the prior Agreement, all other contractual provisions shall remain in full force and effect except as modified by this Award.

The Panel so Awards.

2. Duration

The Association proposed that the new Agreement have a term of 2 years from July 1, 1975 through June 30, 1977. The City proposed a one-year Agreement expiring on June 30, 1976.

When this Award is rendered, even the 2 year period proposed by the Fire Fighters will have expired. The Chairman believes that any term shorter than 2 years will not meet the needs of stability and a continuing healthy relationship between the parties. Any further bargaining should deal with current problems. Therefore, the Award of the Panel is that the term of the contract at issue shall be July 1, 1975 through June 30, 1977.

3. Personal Leave

The Association has proposed that personal leave granted in Article XXXV be increased from 1 to 3 days, and that unused leave be cumutable to 9 days. The City has offered 1 additional day.

The Association agrees that no more than 3 Fire Fighters per tour should be allowed personal leave and that present methods of deciding between applicants should continue.

Fire Fighters in New Rochelle now receive 3 days and

those in Mount Vernon receive 2 days. CSEA unit members receive 3 personal days as do members of the White Plains Police Department unit which has long had a close parallel relationship with this Fire Fighter unit.

The Police received 3 personal days effective July 1, 1975, and were allowed in the July 1, 1976-June 30, 1977 period to enjoy the 2 days which were retroactively awarded.

The Panel finds that on the basis of all these comparabilities that members of this unit shall receive 3 personal days effective July 1, 1975. These days shall not be cumulable but the 4 additional days which would have been available during the contract period may be utilized in addition to current days over the 2 years ending June 30, 1979. Utilization of the 4 retroactively awarded days shall occur with reasonable regard to the staffing needs of the City. No more than 3 persons per tour shall use current days. We so Award.

4. Holidays

Both Personal Leave and Holidays might be included in economic items as well as in this section. Were we to grant the demand on holidays, we would definitely include it under economic items since the cost of the demand is high.

At present the unit is paid for 11 holidays at 8 hours pay. The Association asks that this be increased to 12 holidays at 12 hours pay. (Unit members work 40 hours per week in 14 or 10 hour tours.)

The Panel notes that the most usual number of holidays enjoyed by Westchester Fire Fighters is 11, that Mount Vernon has 9 and New Rochelle 11, and that neither of these comparable cities pays for 12 hours on holidays. White Plains CSEA employees have 13 holidays and White Plains Police enjoy 11 holidays at 8 hours pay. Arbitrator Lang declined to increase the number of holidays for the Police of this City and this Panel also declines to change the number of holidays or the method of compensation. We Award that the holiday Article remain unchanged.

5. Grievance Procedure

The Association seeks 2 changes in the Grievance Procedure, Article XXXIV. It seeks the right of the Association President to initiate grievances affecting the Association as a whole and to commence arbitration at Stage 3, Section 6. And it seeks to remove the right of the City Council at Third Stage (d) to set aside an Award upon the determination "that such might seriously and adversely affect the public."

We do not know under what circumstances the Council might set aside an Award since this has never occurred. In the absence of any showing that the City has ever abused its power, the Chairman shall not recommend a change in the language.

There are actions which may affect a substantial number of members of the unit. In such case it is common and efficient to allow the Association President to file a group grievance

on behalf of members so affected. The Panel shall Award such a provision.

On the other hand, the Association President should not have the power to file where one or only a few Fire Fighters are affected and no affected individual chooses to file. While the Association might, in such case, file a statement that it does not acknowledge the failure to grieve as setting any precedent, it should not be able to compel individuals to grieve who do not wish to take such action on their own behalf. Fact Finder Blant found similarly and the Chairman agrees.

The Panel Awards a change in the grievance procedure enabling the Association President to grieve on behalf of a substantial proportion of Association members where all are similarly affected and further Awards the right of the President to commence arbitration in such a case at Stage 3, Section 6. We do not Award a change in the right of the City Council to set aside an Award. Nor do we Award the right of the President to file on behalf of an individual or a small group.

Economic Items

1. Uniform Allowance

The Panel is agreed that patches shall be provided for previously issued uniforms. It also agrees that a steel inner sole for boots shall be issued to unit members as needed. We do so Award.

The Panel does not recommend a cash allowance of \$125 per year. While a minor part of this sum might be used to purchase items required but not issued, the major portion of this sum would be used to clean and maintain uniforms. This is a proper expense of the employee and we do not Award the \$125 requested.

2. Education

The Association requests that any member who completes an Associate's degree in Fire Science shall receive a 5% increase in salary. At present the City maintains a fund to assist in payment of tuition and expenses for such courses.

The Chairman notes that further study may well be of value to the City. But such study is not required for admission to the Department or advancement. If the City does not require further education (as, for example, is required of new teachers with a BA) then there is not reason for payment of additional salary for such study. We do not Award the requested 5% increase upon completion of the Associate's degree.

As a dictum the Chairman adds that the parties might wish to reconsider, in future negotiations, the size of the present tuition assistance fund. It might usefully be made larger if the parties are agreed that benefits accrue from continued education.

3. Overtime and Recall

All increases in overtime pay, recall pay and the like

must be drawn from the entire sum available for an economic settlement. The Association here requests double time for overtime on Sundays and holidays. It also seeks double-time recall pay on Sundays and holidays. It also seeks one-half hour of overtime at the appropriate rate for travel when recalled.

Only New Rochelle has a provision re double time for overtime on Sundays and holidays. No contract provides for travel pay.

The Fact Finder found the present contract provisions reasonable and fair. The Association states that overtime on Sundays and holidays is a rare occurrence in any event. We see no reason to disagree with the Fact Finder and to award an unusual benefit for a rarely occurring situation. We Award no change in the present overtime and recall Article.

4. Severance Pay

The Association seeks a new provision of 4 weeks severance pay upon retirement and 2 weeks of severance pay upon leaving the employ of the City under certain conditions prior to retirement. While Mount Vernon and New Rochelle provide some form of benefit in this area, it is not shown that the benefit is common. The Fact Finder rejected this request not only for this unit but also for the White Plains Police in a parallel proceeding. The Police did not have this benefit awarded by Arbitrator Lang.

It is true that the CSEA unit in White Plains has a form of severance benefit. On the other hand, the Fire Fighters have a retirement plan which is both superior to and more costly than that of the CSEA.

We do not Award severance pay.

5. Out of Title Pay

The Panel shall not Award any provisions for out of title pay. If any member of the unit is required to spend a substantial amount of his time in work of a higher title, this is a violation of State Law, as the Fact Finder noted. Such unit member has a remedy available in another forum. It would be inappropriate to provide compensation for an assignment which is contrary to law.

We do not Award any provisions for out of title pay.

6. Welfare Fund, Life Insurance, Benefit Plans

The Association has made a number of fringe-benefit demands which are here grouped. First there is a demand for a \$50 yearly contribution per member to an Association-administered welfare fund. This would yield additional maternity benefits, a psychiatric benefit, eye glasses, physical examinations, and a payment toward the fees for making of wills. Since the monies available for wages and benefits are limited and since important new benefits are provided below, the \$50 payment to the Welfare Fund is not Awarded.

The Association further makes certain demands for increased life insurance protection. The Panel finds that in view of the real hazards which are inherent in this occupation, an increase in death benefits of some type is fully warranted as an improvement of the economic protection for members of the families of Fire Fighters. We do not Award provision of a City-paid life insurance policy. We do Award provision, as of July 1, 1977, of the protections of Section 360-b of the New York State Policemen's and Firemen's Retirement Fund - Guaranteed Minimum Death Benefit. This Section provides a minimum death benefit of \$20,000. Under the coverage presently provided to members of the unit, members hired before 1973 have to work 17 years before accumulating an insurance benefit of this size.

The New York State Retirement System has indicated that the additional cost to the City is one-tenth of 1% of salary. This is a large benefit for a relatively small cost. We Award coverage for all unit members under Section 360-b, effective July 1, 1977.

The unit is presently covered by a dental policy to which the City contributes \$100 per unit member. The City contributes a larger amount to the coverage provided members of the White Plains CSEA unit. There is no reason why the coverages for this unit should be less than those provided other City employees to meet identical needs. The Panel therefore Awards that as

of July 1, 1977, annual contributions by the City to the dental plan covering the Fire Fighter unit shall be \$160 for family coverage and \$110 for individual coverage.

7. Longevity Pay

At present White Plains Fire Fighters receive a longevity increment of 1% after completion of the 5th year of service, 2% after completion of the 10th year, and 3% after completion of the 15th year. The Association seeks, effective July 1, 1975, increase in these increments to 3%, 6% and 9% respectively. While the Association cites a number of communities offering higher longevity increments than White Plains, these do not include the cities of Mount Vernon or New Rochelle. Each, during the 1975 and 1976 years, paid lower longevity benefits both to Fire Fighters (see City Brief p. 15) and to Officers (see City Brief p. 58).

We have already Awarded meaningful increases in benefits and shall Award below a 2 year wage increase which we consider to be fair and equitable. In view of these Awards, we do not Award any change in longevity pay.

8. Salaries

The Association requested a 10.8% increase effective July 1, 1975. It requests a percentage increase equal to the change in the CPI from April 1975 to April 1976 plus 3%, effective July 1, 1976. It also requested an increase from 15% to 20% in

the differential between Lieutenant and Fire Fighter.

The City offered, for a 1 year contract expiring June 30, 1976, the same increase as was Awarded to the White Plains Police. As of July 1, 1975, The City offered \$900 to top grade Fire Fighters. Fire Fighters in grade and officers would receive a 6.4% increase. As of January 1, 1976, top grade Fire Fighters would receive \$ 300 and all other ranks would receive a 2% increase. This is what Dr. Lang awarded to the Police. Because the January 1, 1976 increase is an annual increase, there would be a roll-over effective July 1, 1976 of another 1% and there would be in-grade increases of 1% (See City Ex. 13).

If wage increases are to be Awarded for a second year, the City proposes that they fall within the range of percentage increases negotiated with the City unions other than the Police. No settlement for 1976-1977 has been reached with the Police. Department of Public Works employees represented by Teamster Local 456 received a flat increase of \$600 which represented an increase of from 4.2% to 5.2% depending on prior base salary. The CSEA unit negotiated a 5% increase exclusive of in-grade increases or increments. For 1976-77, the teacher settlement yielded an increase of 5.2% in the BA+60 Step 5 which was the salary step closest to the Fire Fighter 1975-76 rate. The School District CSEA employees received 5% for 1976-77 in the

first year of a 3 year agreement.

For the first year of a 2 year contract, the Panel shall Award the same increase as Awarded the White Plains Police by Dr. Lang. There is a long history of parallel wages and benefits between these 2 units. They are the most nearly comparable of the City employee units. Furthermore, this increase would yield a higher salary as of June 30, 1976 to top-grade White Plains Fire Fighters than was received on that date in either New Rochelle or Mount Vernon. The White Plains Fire Fighter would be paid, effective June 30, 1976, \$15,210 as opposed to \$14,765 in New Rochelle and \$14,600 in Mount Vernon.

(Since longevity, holiday pay, and overtime payments are affected by changes in base salary, the total increase would be greater than the increase in base salary. The City would like this fact to be considered. But since these multiplier effects were contemplated by the parties when they negotiated the relevant contract provisions, the anticipated and intended effect should not be charged against the unit members.)

We conclude that the 1975-76 increase already Awarded in the Police unit is a fair and equitable adjustment for this unit. We have already said that the proofs show that any increase deemed fair and equitable on other grounds lies within the City's ability to pay. This is especially relevant since

the increase to be Awarded has already been granted by the City to the Police unit.

For the 1975-76 contract year, the Panel Awards as follows with regard to wages:

1. The top grade Fire Fighter shall receive a \$900 increase from \$14,010 to \$14,910 as of July 1, 1975 and a \$300 increase to \$15,210 as of January 1, 1976.
2. Other Fire Fighters and other ranks in the Fire Department shall receive a percentage increase as of July 1, 1975 of 6.4% over their June 30, 1975 salaries; and a percentage increase as of January 1, 1976 of 2.0% over their December 31, 1975 salaries. All salaries resulting from this Award shall be rounded to the nearest \$5.

The question of what would be a fair increase as of July 1, 1976, is not so evident. The June, 1976 to June, 1977 increase in CPI for the New York-Northern New Jersey Metropolitan Area was 5.8%. Applied to the \$15,210 June 30, 1976 salary of a top grade Fire Fighter, this would yield a salary of \$16,092 or \$16,090 rounded to the nearest \$5. The White Plains Police increase for 1976-1977 has not yet been agreed upon. The other units have settled at from 5% to 5.2% for persons at comparable base salaries. As of July 1, 1976, Mount Vernon was paying \$15,800 and as of January 1, 1977, \$16,550. As of July 1, 1976, New Rochelle was paying \$15,650 and \$16,119 as of January 1, 1977.

To award the increase in living costs for the past year as the increase in salaries for that year would yield a somewhat

higher increase to the Fire Fighters than was granted to other City units. It would yield a somewhat lower dollar increase in White Plains than that received in Mount Vernon. It would yield more dollars than received by Fire Fighters over the year in New Rochelle. Fire Fighters at top grade in Mount Vernon received an actual annual salary between July 1, 1976 and June 30, 1977 of \$16,175, while those in New Rochelle received actual salary of \$15,885.

With regard to comparable Fire Fighter units, a 5.8% cost of living increase would be fair. And the Chairman is aware that settlements with police and fire units tend to be somewhat higher than those with other City units. This appears to be an equitable settlement and will be awarded.

For the contract year July 1, 1976 through June 30, 1977, the Panel Awards as follows:

All June 30, 1976 salaries of Fire Fighters and other ranks within the unit shall be increased as of July 1, 1976 by 5.8% with increases shall be rounded to the nearest \$5.

The Association also requests an increase in the differential paid Lieutenants above the top paid Fire Fighter of 20% instead of 15%. While the differential is 15% in New Rochelle and Mount Vernon, there is a rank of Captain in those communities which does not exist here, the Association argues. Thus Lieutenants have greater responsibilities in White Plains and should be

more highly compensated, it is argued.

The Fact Finder rejected this request. No community pays more than a 15% differential for Lieutenants. We do not Award a change in differentials for Lieutenants.

9. Retroactivity

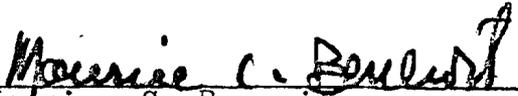
Wherever a retroactive provision would be meaningful, it has already been Awarded. This is true of salaries, personal days, and term of agreement. Thus there is no need for any further provision for retroactivity and we do not Award such.

Final Comments

This Discussion and Award has considered and ruled upon every item which was open and discussed during the hearings and in the Briefs.

The Panel was greatly aided by the thoughtful presentation of the parties. The Chairman was immeasurably assisted by the knowledge, patience, and good judgment of his fellow Panel members.

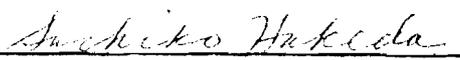
We unanimously adopt all Awards, both positive and negative, set forth above.


Maurice C. Benewitz
Public Panel Member

Dated: August 12, 1977

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

On the twelfth day of August, 1977, before me personally came MAURICE C. BENEWITZ to me known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.


SACHIKO HAKEDA
NOTARY PUBLIC, State of New York
No. 31-4546014
Qualified in New York County
Commission Expires March 30, 1979


Bertrand B. Pogrebin
City-appointed Arbitrator

Dated: *AUGUST 17, 1977*

STATE OF NEW YORK)
COUNTY OF NASSAU) ss:

On the *17th* DAY OF *AUGUST, 1977* before me personally came Bertrand B. Pogrebin to me known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

HARRY H. RAINS
Notary Public, State of New York
No. 30-3198300
Qualified in Nassau County
Term Expires March 30, 1978


NOTARY PUBLIC


Thomas P. Flynn
Association-appointed
Arbitrator

Dated:

STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss:

On the before me personally came Thomas P. Flynn to me known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

HENRY LONGO
NOTARY PUBLIC, State of New York
#60-7592815
Qualified in Westchester County
Term Expires March 30, 1978


NOTARY PUBLIC