

NEW YORK STATE  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of the Interest Arbitration Between :  
: VILLAGE OF JOHNSON CITY :  
: - and - :  
: JOHNSON CITY FIREFIGHTERS ASSOCIATION, LOCAL 921, :  
: AFL-CIO, I.A.F.F. :  
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CONCILIATION  
PERB Case #IA-49:M77-802  
OPINION AND AWARD OF  
THE ARBITRATION PANEL

APPEARANCES

Following a deadlock in bargaining between the Village of Johnson City (Village or Employer) and Johnson City Firefighters Association, Local 921, AFL-CIO, I.A.F.F. (Association or Union), this interest arbitration Panel was designated to resolve the dispute. There were lengthy delays in scheduling hearings because both parties were engaged in litigating IP Charges and Countercharges before PERB. Finally, those efforts were exhausted and the Panel held a hearing in Endwell, New York, on May 3, 1979. Both parties were represented at the hearing and afforded a full opportunity to present oral and documentary evidence in support of their position. Representing the Union was Ball and McDonough, P.C., Kevin F. McDonough, Esq., of Counsel. Appearing on behalf of the Village was Mr. Peter Pirnie, Consultant. Both parties filed post-hearing briefs which were received in early June 1979, whereupon the record was declared closed.

BACKGROUND

The contract under renegotiation in this dispute was effective for the period June 1, 1975 through May 31, 1978. Following direct negotiation and

mediation, interest arbitration was invoked. Protracted litigation of IP Charges and Countercharges concluded in May 1979 and our hearing was convened. When first we met with the parties we were advised that some twenty (20) items were in dispute. The Panel collectively determined that further narrowing of the issues was possible and highly desirable. In that regard, the Chairman acknowledges with appreciation the diligent mediation efforts of his colleagues on the Panel. With the Panel's assistance, the parties were able to arrive at a Memorandum of Agreement resolving most of the outstanding issues and referring the six (6) remaining issues to interest arbitration (Attachment A). Accordingly, the following issues must be addressed by the Panel in this case:

1. Salary Increases, 1978-79 and 1979-80 (Article II);
2. Overtime or Call-in Pay (Article III);
3. Holidays (Article VI);
4. Uniform Allowance (Article XI);
5. Hours of Duty (Article XVIII); and
6. Hazardous Duty Pay (new article).

Both parties presented pre-hearing and post-hearing submission, supplemented by oral argument, expert testimony and volumes of statistical data, including wage comparisons, financial analyses and fiscal projections. In the case of the Association, most of this material appears to have been developed specifically for this Panel. As for the Village, it presented at our hearing the same submission it had used in an earlier interest arbitration involving police employees. We have reviewed in detail and considered carefully all of the evidence and all of those data bearing upon the matters in dispute. In our deliberation and in formulating our Award, we have based our conclusions upon those factors which are normally or traditionally taken

into consideration in the determination of wages, hours, and conditions of employment. We have taken particular note of the earlier interest arbitration award involving police employees of the Village. Of paramount interest in this case is the welfare and interest of the public in terms of an efficient and highly motivated professional firefighting force, balanced against the fiscal realities of the public employer's ability to pay and the above-referenced comparability relationships. The collective bargaining agreement which expired on May 31, 1978 was made a part of our record and has been reviewed carefully with respect to compensation and fringe benefits. Finally, the paramilitary nature of firefighting work as well as the peculiarities of that profession including hazards of employment, physical qualifications, educational qualifications, mental qualifications, and job training and skills have all been considered.

#### DISCUSSION

##### Article II - Salaries

As noted supra, the parties negotiated an agreement regarding salaries for the contract year June 1, 1980 through May 31, 1981. The first two years of their three-year agreement (1978-79 and 1979-80) were referred to us for salary disposition. In pressing for "substantial increases" in firefighters' salaries for those years, the Union emphasized the continuing and increasing erosion of purchasing power due to inflation. In addition, the Union presented data on productivity and compared salaries of Village firefighters with those of other similarly situated employees. Finally, the Union claimed entitlement, as a matter of equity, to a marginally greater increase since it asserted that it had failed to receive bargained for concessions in manning under the prior contract.

The Village also cited inflationary pressures of its own and other fiscal constraints to justify its offer of one (1) percent plus an amount equal to whatever savings were generated by "productivity gain in time on the job".

We have reviewed those data, testimony and other evidence. We find persuasive the comparability contention urged by the Union with respect to other similarly situated municipalities in the Southern Tier of New York State. Those considerations compel a conclusion that the firefighters should receive substantially higher salary increases than the Village has offered to pay. The record establishes convincingly that the Village has the ability to pay reasonable salary increases. Accelerated jumps in the cost of living appear to be a constant in the economy, both in recent memory and in the foreseeable future. However, inflation and the consequent erosion of purchasing power strikes employees, employer and taxpayer without discrimination. In that respect, the Village cannot reasonably be expected to insure employees against the impact of inflation. Another consideration bearing upon our decision as<sup>to</sup> the level of increases in salaries is the voluntary wage-price guideline of 7 percent per annum advocated by the President of the United States and the Council on Wage and Price Stability. We also find pertinent and persuasive the recent interest arbitration award resolving the bargaining dispute between the Village and its police employees. Based upon all of the foregoing, therefore, we shall award salary increases across the board of 7 percent for 1978-79, and an additional 7 percent for 1979-80. Such increases strike a reasonable balance of the equities under the statutory criteria by which we are granted and are clearly supported by the record evidence before us.

### Article III - Overtime (Call-in Pay)

The Union seeks to amend Article III to provide for "call-in pay", i.e., a minimum payment at the overtime rate for firefighters called back to service during their off-duty hours. The present contract language provides for time and one-half payment "for time actually worked" outside of regular duty hours but stipulates no minimum call-back payment. The Union proposed that a minimum of three hours be paid if the firefighter is summoned back to duty. The Village flatly opposes any call-in minimum on grounds that such matters are "inherent management prerogatives" and that such minimums are subject to manipulation by the employees. The Union emphasizes that its minimum overtime proposal applies only to call-back situations and not to hold-overs. The primary rationale is to minimize disruption to the personal life of the off-duty fireman except in real emergencies.

We are persuaded of the basic merit of the Union's position and we note particularly the analogy to the agreement between the Village and its police employees, who are paid a minimum call-in for off-duty court appearances. Accordingly, we shall direct the amendment of Article III to provide minimum of two hours call-back pay for firefighters summoned to duty during hours when they are not otherwise scheduled to work.

### Article VI - Holidays

Due to the exigencies of firefighting work, coverage is required 365 days each year. The present contract specifies twelve (12) recognized "holidays", but these are not "days off" for the individual firefighter unless the "holiday" happens to fall on one of his regular rest days. Rather than giving the holiday off or extra compensation for working the holiday,

the Agreement provides in Article VI, Sections 4, 5, and 6, for compensatory time off as follows:

\* \* \*

4. All members of the Fire Department shall receive two (2) weeks of additional time in lieu of the above designated holidays after the first full year of employment.

5. All members of the Fire Department who come on the payroll after January 1, and who have not served a full year of employment, will receive compensatory time off for holidays falling within his period of employment.

6. If a man is on vacation and a holiday falls in the vacation period, he gets an extra day in the future.

The record indicates that a dispute arose in March-April 1978 regarding the interpretation and application of the foregoing provisions, but with contract expiration imminent grievance arbitration has been postponed.

Both parties seem to agree that the present "in lieu of" language is difficult to administer and it contributes to problems of manpower utilization. The Union proposes to eliminate the two weeks compensatory time off treatment of holidays and instead to provide contractually for monetary compensation in lieu of the holidays off, by paying the firefighters an additional 96 hours of pay, whether working on a holiday or not. In addition, the Union seeks time and one-half pay for hours worked on a designated holiday. The Village presented demands of its own regarding the treatment of holidays under Article VI. The Village would reduce from twelve to eight the designated holidays and eliminate the "in lieu of" accrual of compensatory time except for holidays actually worked. The Village opposes monetary compensation for holidays and also would like to delete Section 3 supra from the contract language.

We have reviewed the respective positions of the parties with care. Neither party is satisfied with the present "in lieu of" language and some

change obviously is warranted. We must reject the Village's approach because no probative evidence or persuasive reason has been advanced for the abrogation of contract rights previously negotiated. We do see some merit, especially in terms of improved manpower utilization opportunities, in the Union's proposal to convert compensatory time off into monetary compensation. However, we are not unaware of the difficulties of implementing such changes and uncertainties in projecting the ultimate impact of such a transition. Accordingly, rather than awarding outright conversion at this time, we take the more moderate approach of going part way to conversion. We do so cognizant that contractual provisions established by our Award are subject to reopened negotiations in 1980 under the terms of the parties' Memorandum of Agreement. Thus, the partial conversion from time off to monetary compensation will be implemented for at least the upcoming year and the parties will have nearly one year of experience with that approach against which to compare their prior joint dissatisfaction with the old language.

#### Article XI - Uniform Allowance

The Union urges an increase of the present \$75 annual vouchered uniform allowance to \$125 for contract year 1978-79 and \$150 for 1979-80. In support of this demand the Union presented testimony from one firefighter who stated that he lost money each year cleaning, maintaining and replacing his required uniform. The Village flatly rejects the proposal for increasing uniform allowances and insists that the present benefits are adequate.

Aside from bare assertions and unsupported opinion, there is no probative evidence on the record regarding the adequacy or inadequacy of the present uniform allowance. In evidentiary terms, the Union, as moving party on this issue, has not carried its burden of proof. The Panel is of the opinion, however, that both parties could benefit from a continuing dialogue on this

subject and accordingly we are going to refer the matter to the Fire Labor-Management Committee established by Article XXII of the Agreement. We recommend full and frank exploration of uniform allowance adequacy by that Committee so that information may be developed around which meaningful discussions and possibly negotiations can take place in the future.

Article XVIII - Hours of Duty

The present contract language on this point reads as follows:

ARTICLE XVIII: HOURS OF DUTY

The hours of duty for the Fire Department, will be scheduled on a two-platoon shift. In addition to their scheduled salaries as set forth in Article II, the firemen shall be paid an additional two (2) hours pay each week, computed at their regular hourly rate of pay.

In these negotiations the Union at first proposed payment of the additional two (2) hours pay at time and one-half rates, but dropped that demand prior to arbitration. The Village apparently seeks to eliminate entirely the two (2) additional hours pay, although its position is not clearly articulated on our record. As we understand it, the Village insists that it can unilaterally abrogate the two (2) hour pay provision of Article XVIII, as a matter of law. In that connection, the Village relies upon Attorney General Opinions to argue the illegality of the two (2) hour pay provision; and upon PERB determinations of nonmandatory bargaining subjects to argue that it may unilaterally remove the two (2) hour provision without reference to the Union or to this Panel. Arguendo, the Village appears to be asking this Panel to write that provision out of the contract.

On the record before us, we are not persuaded of the illegality of the contract language in question. Nor are we convinced that amendments to Article XVIII are per se not bargainable. We do note that the provision was negotiated bilaterally and is a product of both parties in earlier bargaining.

There is on this record no persuasive reason in law, equity or contract for us to undo what the parties have jointly negotiated. If abrogation of the two (2) hour provision is to be accomplished it will have to be through some means other than this Panel.

#### Hazardous Duty Pay

Without question firefighting is one of the most dangerous occupations performed by man. This fact has been considered by the Panel and is reflected in our salary determinations. Early in negotiations the Union sought additional compensation for firefighters called out with less than a full complement of men. Review of the Union's Petition for Referral of the dispute to interest arbitration, however, shows that the Hazardous Duty Pay demand was dropped during mediation. Nonetheless, the Union urges that withdrawal at that time was tentative or conditioned upon positions later reversed by the Village. As we view this demand, it goes primarily to the issue of manpower utilization, a subject discussed and addressed by us in the Holiday issue supra. We hold that the Hazardous Duty Pay demand should be withdrawn by the Union at this time.



AWARD

In full and final settlement of a dispute (PERB Case No. IA-49, M77-302) between the Village of Johnson City, New York, and the Johnson City Firefighters, IAFF Local 921, the Agreement between the parties bearing effective dates June 1, 1975 through May 31, 1978 extended and modified by their Memorandum of Agreement dated May 3, 1979, shall remain in full force and effect until the 31st day of May, 1981 except for the following amendments, deletions, and additions:

1. Article II - Salary Increases:

Section 1 containing the salary schedules shall be amended to provide a seven percent (7%) across-the-board increase effective June 1, 1978 and an additional seven percent (7%) effective June 1, 1979. E.g., the base salary of a Battalion Chief shall be increased to \$14,150.75 commencing June 1, 1978 and to \$15,141.30 commencing June 1, 1979, with proportionate increases to the other base salaries in the schedule.

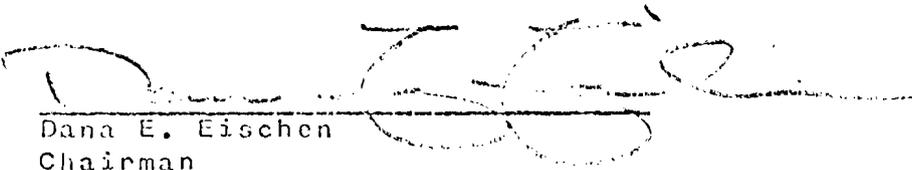
2. Article III - Over-time:

Effective June 1, 1979, Article III shall be amended by adding the following sentence: "If summoned on duty at a time when he is not scheduled to work, the member shall receive either the time and one-half rate for time actually worked, or a minimum of two(2) hours' pay at the time and one-half rate, whichever is greater."

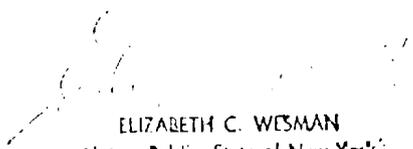
3. Article VI - Holidays:

Effective June, 1979 Section 4 shall be amended by deleting the phrase "...two(2) weeks" and inserting in its place the following phrase: "...Forty-eight (48) hours' pay, whether the holiday is worked or not, and one (1) week...".

Other matters referred to this Panel by the Memorandum of Agreement, which is attached hereto and made a part hereof, are disposed of on the bases set forth in the Opinion which accompanies this Award.

  
Dana E. Eischen  
Chairman

State of New York )  
County of Tompkins ) SS:

  
ELIZABETH C. WESMAN  
Notary Public, State of New York  
No. 4652438  
Qualified in Tompkins County,  
Term expires March 30, 1981

On this 28th day of June, 1979, before me personally came and appeared Dana E. Eischen, 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.

*Richard E. Thomas*

Richard E. Thomas

State of New York )  
County of *BROOME* ) SS:

On this *30<sup>TH</sup>* day of *JUNE*, 1979, before me personally came and appeared Richard E. Thomas, 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 Petras Jr*

JOHN PETRAS, JR.  
Notary Public, State of New York  
No. 4505034  
Residing in Broome County  
My commission expires March 30, 1981

*John Przekop*

John Przekop

District of Columbia) SS:

*City of Tompkins*

On this *12* day of *July*, 1979, before me personally came and appeared John Przekop, 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.

*Elizabeth C. Wesman*

ELIZABETH C. WESMAN  
Notary Public, State of New York  
No. 4652438  
Qualified in Tompkins County  
Term expires March 30, 1981

Attachment A

MEMORANDUM OF AGREEMENT

The undersigned parties to PERB Case # IA-49, M77-802 hereby agree as follows:

*KMY*

) The collective bargaining agreement (Agreement) between the parties for the term June 1, 1978 through May 31, 1978 hereby is extended without modification, except as referenced hereinafter, for an additional term of three (3) years through May 31, 1981.

- a) Effective June 1, 1980 the salaries in effect May 31, 1980 (Art. II) shall be increased across the board - the amount of seven (7%) percent.
- b) If the cost of living as issued by the U.S. Department of Labor, Bureau of Labor Statistics, Consumer Price Index (CPI) for Urban Wage Earners and Clerical Workers, U.S. City Average exceeds 5 percent for the year ending February 1980, the Association may, upon <sup>with</sup> notice to the Village reopen negotiations concerning further salary increase (Art. II) of the final contract year. To be effective such notice must be given by April 1, 1980, or within 15 days of release of the CPI data by BLS, whichever date first occurs.

) The following matters in dispute between the parties are referred to the Arbitration Panel for final and binding interest arbitration:

- a) Salary increases for contract years 1978-79 and 1979-80 (Art. II)
- b) Overtime (Art. III)
- c) Holidays (Art. VI)
- d) Uniform Allowance (Art. XI)
- e) Hours of Duty (Art. XVIII)
- f) Hazardous Duty Pay

) The Award of the Arbitration Panel with respect to the foregoing matters will remain in effect through May 31, 1981 (except for Art. II Salary which is established herein for 1980-81), unless either party serves written notice upon the other to reopen negotiations on such matters. Such reopener notice to be effective must be made within 30 days of May 31, 1980.

*KM*

For Local 921, IAFF

*[Signature]*  
\_\_\_\_\_

For Village of Johnson City

*[Signature]*  
\_\_\_\_\_

Witnesses

*[Signature]*  
\_\_\_\_\_

Richard Thomas

*[Signature]*  
\_\_\_\_\_

John Przekop

*[Signature]*  
\_\_\_\_\_

Dana Eischen

