

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Interest Arbitration Between

THE CITY OF KINGSTON,

and

KINGSTON PROFESSIONAL FIREFIGHTERS ASSOCIATION,
LOCAL 461 I.A.F.F., AFL-CIO,

Employer,

Union.

: PERB CASE NOS.
: IA80-49
: M80-641
: JS NO. 634
: OPINION
: AND
: AWARD

Before the Public Arbitration Panel:

JOHN E. SANDS, Public Member and Chairman
THOMAS BROWNE, Employer Member
ROBERT F. GOLLNICK, Employee Organization Member

JUN 9 1981

OPINION

On April 21, 1981 Harold R. Newman, Chairman of the New York State Public Employment Relations Board, appointed us as the Public Arbitration Panel under Section 209.4 of the Civil Service Law to make ". . . a just and reasonable determination of the matters in dispute . . ." between the above parties. In accord with our authority under that law, we conducted a formal hearing on May 7, 1981 in Kingston, New York. At the formal hearing representatives of both parties appeared and had full and equal opportunity to present testimony under oath, documentary exhibits, and argument in support of their respective positions. Each had full opportunity to cross-examine the other's witnesses. Neither party has raised any objection to the fairness of this proceeding, nor has either sought leave to submit additional evidence to us.

We have carefully considered the entire record before us in the light of the standards prescribed by Section 209.4(c)(v) for resolution of this dispute:

(v) the public arbitration panel shall make a just and reasonable determination of the matters in dispute. In arriving at such determination, the panel shall specify the basis for its findings, taking into consideration, in addition to any other relevant factors, the following:

a. comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours, and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities.

b. the interests and welfare of the public and the financial ability of the public employer to pay;

c. comparison of peculiarities in regard to other trades or professions, including specifically, (1) hazards of employment; (2) physical qualifications; (3) educational qualifications; (4) mental qualifications; (5) job training and skills;

d. the terms of collective agreements negotiated between the parties in the past providing for compensation and fringe benefits, including, but not limited to, the provisions for salary, insurance and retirement benefits, medical and hospitalization benefits, paid time off and job security.

On the basis of that consideration, we have reached the following conclusions:

Factual Background

At issue is a wage reopener for contract year 1981. During October, 1980 the parties' representatives negotiated a nine percent increase for this bargaining unit. On January 6, 1981 the Common Council of the City of Kingston rejected that agreement, notwithstanding their approval just two months later of a nine-percent-plus-other-monetary-benefits contract for police department employees. This impasse proceeding ensued and has been properly processed to arbitration by us. The union, having lost its negotiated, nine percent agreement to apparently political considerations, now seeks an eleven percent increase from this panel.

Relevant Standards

(a) Comparability.

Bargaining unit employees have firefighting responsibilities for the City of Kingston. Kingston has 8.6 square miles' area, more than both the cities of Poughkeepsie and Newburgh together. Kingston's population is about twenty-five thousand people. Fire protection is provided by a combination of paid and volunteer firefighters. The paid department is made up of three paid engines and two paid truck companies. The volunteer portion of the department comprises five engine companies and one salvage company. These

volunteer companies supplement the paid department. The paid department's manpower comprises seventy-four firefighters, officers and civilian employees.

The record is clear that the City of Kingston's firefighting hazards are very similar to those of the nearby and similar communities of Poughkeepsie and Newburgh. Kingston shares the same recent increases in cost of living and general labor market conditions with other neighboring communities.

Comparability data with respect to wage rates are impressive. During 1980 a top-grade Kingston firefighter earned an annual salary of \$14,791. A similarly-situated Arlington firefighter earned \$16,156. One in Middletown earned \$15,356. One in Newburgh earned \$15,290, and one in Poughkeepsie earned \$15,750. We therefore find Kingston firefighters' compensation on the low end of a range of comparable communities without appropriate reason, given the similar natures of firefighting service in Kingston as compared to those other communities.

(b) Interests and Welfare of Public and Financial Ability of the Public Employer to Pay.

The parties agree that the City of Kingston has a fine paid firefighting service and that the public welfare requires maintenance of that high standard as well as of the integrity of the City's fisc. They disagree, however, as to the appropriateness

of the union's eleven percent demand in this proceeding.

The parties have adduced substantial evidence of the City's good fiscal condition. We find the following noteworthy features sustain our conclusion that the City of Kingston is financially able to pay the "just and reasonable" increase required by this award. First, a recent history of conservative budgetary estimates of revenues and expenses yields a firm basis for anticipating Kingston's 1981 operations will not exceed budgetary provisions. Second, the Common Council has actually appropriated the money necessary for the parties' nine-percent negotiated settlement as a \$25,803 "contingency" account in the fire department budget. That figure represents the difference between the nine percent increase recommended by the mayor and a six and one half percent increase appropriated by the Common Council. Third, we note the extraordinary money-market rates in excess of fourteen percent which have prevailed for certificates of deposit during the six month period that the City has been able to withhold payment of its firefighters' 1981 wage settlement. Finally, we note that the City's surplus operation in recent years has generated an unappropriated general fund balance of \$1,223,581.62. We recognize that a general fund balance does not equal a surplus unreservedly available for current use. It does, however, represent a fund for meeting city expenses pending realization of revenues. In this case that balance reinforces our determination of the City's ability to pay without

negative impact on the interest and welfare of the public

(c) Justice and Reasonableness.

Section 209.4(c)(v) requires us to make a "just and reasonable determination" based on the cited standards and ". . . any other relevant factors. . . ." In this case there are two such additional factors which we have considered. First is the erosion of past earnings caused by increases in the cost of living as reflected by rate-of-change of the United States Department of Labor Bureau of Labor Statistics' Consumer Price Index ("CPI"). Although the City disputes which area CPI is precisely applicable to Kingston, we find that distinction of limited utility. Rate-of-change, not the absolute level, of CPI is significant; and all three indices in the record (New York-Northeastern New Jersey, Buffalo, and U.S. City Averages) increased between 11.3 percent and 13.5 percent during 1980.

The second additional factor is opportunity cost. For whatever reason they may have done it, the Common Council has delayed by a full six months realization by Kingston's firefighters of the benefits of the parties' negotiated compromise. Firefighters have lost the use of those monies at a time when short-term interest rates have been at historic levels. The City has had use and benefit of those funds. Basic concepts of equity require compensation for that lost opportunity.

(d) and (e) Peculiarities of Firefighting in Kingston,
and Terms of Past Collective Bargaining
Agreements.

These statutory standards are not relevant to the record of this case. All that is at issue here is a wage reopener, not a full reconsideration of all terms and conditions of employment contained in the parties' subsisting collective bargaining agreement.

CONCLUSION

We have considered the entire record before us in the light of the above standards and conclude that the "just and reasonable" wage increase for bargaining unit employees effective January 1, 1981 is 9.5 percent. This will preserve Kingston's firefighters' compensation against the erosive impact of double-digit inflation, will improve their position vis-a-vis firefighters in comparable communities, will compensate them for the opportunity cost of the Common Council's apparently baseless rejection of their nine-percent negotiated increase, and will serve the interests and welfare of the public and will not impair the financial ability of the public employer to pay.

Our dissenting colleague, the Public Employer Member, contends the appropriate increase should be the nine-percent which the parties negotiated and the Common Council rejected. A majority of us feel that the Common Council's rejection of the negotiated

settlement cast the compensation issue into this statutory impasse proceeding, for which "what-the-parties-negotiated" is not a dispositive standard.

By reason of the foregoing, we issue the following

AWARD

Effective January 1, 1981, the City of Kingston shall increase the wages of bargaining unit employees by 9.5 percent.

Dated: June 9, 1981
Schenectady, New York



JOHN E. SANDS,
Public Member and Chairman

Dated: June 10, 1981
New York



ROBERT F. GOLLNICK
Employee Organization Member

DISSENT

For the reasons stated in the last paragraph of the above Opinion, I dissent and would have awarded bargaining unit employees a wage increase of nine percent effective January 1, 1981.

Dated: June 10, 1981
New York



THOMAS BROWNE
Employer Member

ACKNOWLEDGMENTS

STATE OF NEW YORK

SS:

COUNTY OF SCHENECTADY

Today, June 9, 1981 JOHN E. SANDS came before me in person and acknowledged that he had executed this Award. I know him, and I know him to be the Public Member and Chairman who rendered and executed this Award.

Mary Emily Sauter

MARY EMILY SAUTER
Notary Public, State of New York
Qualified in Schenectady County
No. 4724733
Commission Expires March 30, 1982

STATE OF NEW YORK

SS:

COUNTY OF *Ulster*

Today, June 10, 1981 ROBERT F. GOLLNICK came before me in person and acknowledged that he had executed this Award. I know him, and I know him to be the Employee Organization Member who rendered and executed this Award.

Nancy Hornbeck

NANCY HORNBECK
NOTARY PUBLIC, STATE OF NEW YORK
RESIDENT IN AND FOR ULSTER COUNTY
COMMISSION EXPIRES MARCH 30, 1983

STATE OF NEW YORK

SS:

Ulster
COUNTY OF ~~DUTCHESS~~

Today, June 10, 1981 THOMAS BROWNE came before me in person and acknowledged that he had executed this Dissent. I know him, and I know him to be the Employer Member who rendered and executed this Dissent.

Nancy Hornbeck

NANCY HORNBECK
NOTARY PUBLIC, STATE OF NEW YORK
RESIDENT IN AND FOR ULSTER COUNTY
COMMISSION EXPIRES MARCH 30, 1983

