Award of Arbitration Panel on Reserved Issues

In the Matter of Arbitration

Between

City of Lackawanna

And

Lackawanna Fire Department
Benevolent Association, Inc.

Interest Arbitration

PERB Case No. I.A. 80-37
M80-510

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RECONCILIATION

BACKGROUND

In its award dated April 27, 1981, the panel in the arbitration involving the City of Lackawanna (hereafter the City) and the Lackawanna Fire Department Benevolent Association (hereafter the Association) reserved judgment on four issues because they were the subject of improper practice charges by the City's representative (Charles Ganim). In a decision dated April 24, 1981, Susan A. Comenzo (PERB Hearing Officer) declared that the improper practice charges were not timely, and, thus could not be heard. Therefore, these issues have been remanded to the panel for its award. A discussion of the merits of each issue and the panel's decision is as follows:

OUTSTANDING ISSUES

1. Method for Changing Work Shift

The City is seeking to delete Article VII, Section 3 from the contract. This article reads as follows:

> "If the City contemplates changing the present twenty-four (24) hour work shift, they agree one hundred twenty (120) days prior to making such a change to establish a committee composed of one (1) member appointed by the LFDBA, the Mayor or his representative, the Fire Chief, and one (1) member of the City Council or his representative (a four (4) member committee). The purpose of this committee is to investigate and study the feasibility of such a change, and submit a report(s) to the Mayor, Common Council and the LFDBA, for approval by all parties at least thirty (30) days prior to the proposed implementation of such a change. These thirty (30) days are part of and included in the one hundred twenty (120) day period."

Discussion

The City maintains that, while it is willing to discuss potential changes in the shift arrangement with the Association, this clause unduly restricts its right to effectively manage the work force. The City also argues allowing the Association a veto over changes in the work shift is inappropriate, especially in view of the present fiscal constraints. The City is especially concerned about this clause because some preliminary discussions have been held about the possibility of revising the twenty-four hour work shift.

The Association argues this clause provides a fair and equitable method for determining the applicable work schedule. The Association also maintains it is not unalterably opposed to a change in the twenty-four hour work schedule and is willing to consider some alternatives, following the procedure outlined by Article VII, Section 3. However, the Association is very much opposed to revising Article VII, Section 3 in any way that will permit the City to unilaterally implement a revised work schedule.

Award

After due evaluation of the rationale presented by both parties on this issue, the panel has concluded the City's demand should be withdrawn. The panel is sympathetic to the City's desire to manage its work force in the most effective manner possible, without undue interference from the Association. However, it also recognizes that the shift schedule is a very important term and condition of employment for fire fighters. And, it further believes joint study and collective negotiations are the preferable way to resolve possible revisions in the work schedule. Finally, the panel notes the efficacy of Article VII, Section 3 in dealing with possible alterations in the work schedule has not been tested. Given all these factors, the panel believes the present language should be given an opportunity to prove or disprove its effectiveness. Should the Association renege on its expressed willingness to discuss work schedule changes or exercise its veto in an imprudent manner, the City will be able to make a stronger case, when negotiations are resumed two years hence, to

eliminate this clause. And, of course the City can resubmit its improper practice change, arguing this is a non-mandatory topic, in a timely manner.

2. Fire Fighter Duties

The City is seeking to delete Article XVIII, Sections 1 and 2 from the contract. These clauses read as follows:

Section 1

> "No Firefighter shall be required to perform other than Firefighter's duties in or for any other department or division of the City."

Section 2

> "No Firefighter shall be assigned the duty of washing fire station walls or of painting the fire house."

Discussion

The City argues these clauses interfere with its right to assign fire fighter duties and to effectively utilize personnel. The Association maintains that, especially given the ever-decreasing size of the fire fighting force, it is essential to maintain the ability of these employees to perform their primary function--fighting fires. And, the Association believes extraneous duties, such as those prohibited by Article XVIII, Section 1 and 2, can potentially interfere with this responsibility.

Award

The panel believes the arguments presented by both parties on this issue have merit. Therefore, it has determined that, as requested by the

City, Section 2 of Article XVIII should be deleted from the contract. However, it agrees with the Association, that Section 1 of Article XVIII should remain in the contract and the City should withdraw its proposal to delete it.

The panel believes washing fire station walls and painting the fire house are normal maintenence duties which it is not unreasonable to expect fire fighters to perform when they are not responding to a call. Thus, the panel believes Article XVIII, Section 2 is too restrictive on the City's ability to manage its work force. However, as a general rule, the panel does not believe fire fighters should be performing duties normally provided by other employees. To do so is not effective management practice nor is it fair to either employee group. Of course, a clear exception to this philosophy exists whenever these other duties relate to a fire hazard, e.g., washing down a highway because of a gasoline spill. The panel, therefore, does not believe Section 1, Article XVIII is an unwarranted infringement on management rights.

3. Minimum Crew Requirements

The City is seeking to remove Article XX, Section 5 from the contract. This article reads as follows:

> "It is agreed that there shall be assigned a minimum crew of two (2) to the Emergency and Rescue Truck, a minimum crew of three (3) to the Pumper, a minimum crew of two (2) to the Snorkel, when such equipment is in service, including a minimum of two (2) to the Aerial Ladder Truck."

Discussion

The City argues there is no evidence these contractual minimums are required for safety reasons. Further, it maintains the contractual minimums are an unwarranted curtailment of its ability to effectively deploy personnel. The City also suggests that advances in technology have reduced the need for minimum crew requirements. And, the City maintains it must consider all its options (e.g., utilizing some volunteer personnel) in fulfilling its responsibility to provide an adequate fire fighting force. Finally, the City argues fires are all different and do not always require the same staffing level.

The Association maintains these crew requirements are rock bottom minimums below which it is simply unsafe to send out a piece of equipment. James Moran, a Lackawanna Fire Department Lieutenant, testified as to the duties of the fire fighters assigned to the trucks and why the contractual requirements are the minimum complement necessary to place a piece of equipment into operation. Lieutenant Moran also introduced into evidence data from generally accepted manuals of fire fighting standards which indicated that four-man crews are the minimum complement needed to effectively operate a pumper or aerial ladder truck.

Award

The panel has concluded the City should withdraw its proposal on this issue. The panel fully recognizes minimum crew clauses can be used by fire fighter unions to preserve status quo staffing levels. However, in

this instance, the panel is persuaded the crew requirements in the Lackawanna contract are indeed "minimums" necessitated by reasonable, prudent safety requirements. Clearly, the City is not required to send out a particular piece of equipment. Once it decides to do so, however, the panel agrees with the Association that there is a bare minimum crew required to safely operate that equipment. And, in the present circumstances, the panel concurs that Article XX, Section 5 represents that minimum. Of course, in the future this situation could conceivably change if the City alters its method of responding to fire calls.

4. Call-In Pay

The City is seeking to delete that portion of Article XXI, Section 4 which specifies how a call-in is to be made if the crew is reduced to less than its normal minimum complement. This language provides as follows:

> "When an unexpected or expected absence causes the crew to be reduced to less than its normal minimum complement, the crew will be brought back to minimum by a call-in of a person(s) of the rank causing the unexpected or expected vacancy, using the policy as established in this section."

Discussion

This language is related to the minimum crew requirements previously discussed, and the City's reason for seeking its deletion are the same.

Award

The panel has determined this proposal should be withdrawn. The rationale for this decision is the same as that discussed with respect to Article XX, Section 5.

Thomas G. Gutteridge, Chairman
Public Arbitration Panel

Ted Katra
Employee Organization Panel Member

John P. Moretti
Employer Panel Member

May 15, 1981
Buffalo, New York

Thomas G. Gutteridge, Ted Katra, and John P. Moretti, personally known to me, swore to me this 15th day of May, 1981.

NOTARY PUBLIC