

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

NYC PUBLIC EMPLOYMENT RELATIONS BOARD
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CONCILIATION

In the Matter of the Arbitration Between :	
THE CITY OF KINGSTON :	JS NO. 723
Employer, :	
- and- :	PERB NO. IA 82-4
:	M 81-605
KINGSTON PROFESSIONAL FIRE FIGHTERS, :	
LOCAL 461, IAF, AFL-CIO :	OPINION
Union. :	AND
:	<u>AWARD</u>

Before the Public Arbitration Panel:

John E. Sands, Public Member & Chairman
F. Joseph Markle, Public Employer Member
Robert Gollnick, Employee Organization Member

OPINION

On July 9, 1982 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 resonable determination in the matters in dispute . . ." between the above parties. In accordance with our authority under that law, we conducted a formal hearing in Kingston, New York on August 25, 1982 and met in executive session that afternoon after close of the record.

At the hearing representatives of both parties appeared and had full and equal opportunity to adduce evidence, to cross-examine each other's witnesses, and to make argument in support of their respective positions. Neither party raised any objection

to the fairness of this proceeding, nor did either seek leave to submit additional evidence to us.

In addition, at the hearing there appeared John Donoghue, Esq., an attorney who had been retained by the Common Council of the City of Kingston. On behalf of the Council Mr. Donoghue sought to intervene and participate in this proceeding as a party. We considered Mr. Donoghue's application and rejected it (Member Markle, ⁴dis~~s~~enting) on grounds of the following Public Employment Relations Board Memorandum issued June 8, 1982:

Having received a petition for interest arbitration from the City Council of the City of Kingston on April 28, 1982 in connection with a labor dispute between the City and Local 461, and having received a second such petition from Local 461 on May 4, 1982 to which the Mayor of the City responded, you sought a direction from us as how to proceed. Upon the instruction of the Chairman of the Board, Deputy Chairman Lefkowitz then wrote to the attorneys of the Mayor, the City Council and Local 461 to solicit memoranda of law directed to the question "whether the Mayor, the Common Council, both jointly, or neither by reason of a disagreement between them is the party authorized to act on behalf of the City of Kingston under §209.4 of the Taylor Law."

Having considered the arguments in the memoranda, the sections of the Charter of the City of Kingston cited to us, the factual allegations contained in the Common Council's offer of proof, and, above all, the language of the Taylor Law, we conclude it is the Mayor alone who is both authorized and obligated to act on behalf of the City under §209.4 of the Taylor Law.

The Mayor is the Chief Executive Officer of the City, and, as such, he is authorized and obligated to negotiate on its behalf. CSL §201.12. He did so and reached an agreement with Local 461. The Common Council is its legislative body, and, as such, it may refuse to implement parts of an agreement that require the amendment of a

local law or the appropriation of monies for its implementation. CSL §204-a. They did so and, thereby created an impasse. Pursuant to CSL §209.4, such an impasse in negotiations involving a fire department is, at the request of either party, to be resolved by arbitration. Just as this Board was obligated to assist the parties, that is, the employee organization and the Chief Executive Officer of the City, to reach an agreement, by appointing a mediator, we are now obligated to provide arbitration on their behalf. The arbitration panel consists of one member appointed by each of the parties, that is, the employee organization and the Chief Executive Officer of the City, and a third disinterested member selected by both parties. CSL §209.4 (c) (ii).

The Taylor Law provides that if an arbitration panel is appointed, the local legislative body may refuse to implement any parts of the arbitration award. Thus, parts of the award requiring implementation by the enactment of a local law or the appropriation of monies are like parts of an agreement that do not require such implementation; they are binding upon the City whether or not the Common Council agrees.

The Council argues that the mayor has political obligations to Local 461 which make it unlikely that he will represent the interests of the City reasonably. We cannot conjecture on the quality of the Mayor's performance of his office in this respect. Moreover, we note that an arbitration award that is not supported by the record or is made by arbitrators who do not perform their office honorably may be set aside by a court. Bethlem^{KS} Steel Corp. v. Fennie, 86 misc. 2d 968 (1976), 9 PERB ¶7006 aff'd 55 AD 2d 1007 (4th Dept., 1977) 10 PERB ¶7003.

Although the panel offered Mr. Donoghue the opportunity to remain in the hearing and to be heard on the record produced by the parties (Member Gollnick, dissenting), Mr. Donoghue declined and departed.

We have carefully considered the entire factual record before us as well as the parties' arguments in light of the following standards prescribed by section 209.4 (c) (v) for the resolution of this dispute:

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 the consideration, we have determined the following relevant facts and have reached the following conclusions. In each case we have noted how a majority of us felt the statutory criteria operated to generate that conclusion.

BACKGROUND

Between October 15 and November 10, 1981 the Union and the City (by Mayor Donald E. Quick) met, negotiated, and executed a tentative collective bargaining agreement covering the period January 1, 1982 through December 31, 1983 (Union Exhibit 6).

To date the Common Council has refused to approve that agreement, thereby causing the impasse which this panel has been created to resolve. On July 22, 1982, while the parties were preparing for the scheduled hearings in this matter, Mayor Quick met with the Council to attempt to resolve their own "impasse." City Exhibit 1 records the outcome of their efforts. In short, the Council agreed to accept the parties' negotiated salary increases of 7% and 9%; and the mayor agreed to adopt or present to us the Council's positions on the other issues.

ISSUES AND CONCLUSIONS

A. Vacations

The parties' expired contract provided for vacations of the following periods for personnel with the listed services:

<u>Service</u>	<u>Vacation</u>
1 - 5 years	15 days
5 -10 years	21 days
10 years +	28 days

The parties negotiated a seven-day improvement in those figures, increasing firefighters' entitlements to those already enjoyed by police and water department personnel:

<u>Service</u>	<u>Vacation</u>
1 - 5 years	21 days
5 -10 years	28 days
10 years +	35 days

The council objects to that increase, notwithstanding its approval of substantially equal benefits for other employees of the

City. On the basis of the clearest sort of comparability, we conclude that the parties' new contract should provide the following vacation schedule:

<u>Service</u>	<u>Vacation</u>
1 - 5 years	21 days
5 -10 years	28 days
10 years +	35 days

We reject as unpersuasive the suggestion that firefighters' longer, but less frequent, tours of duty give them more time off for the same vacation periods as their police counterparts. In fact, depending on what platoon a particular firefighter works, twenty-one consecutive days off means he will miss either 102, 114, or 144 hours of work. Over three forty-hour weeks, all police officers on vacation will have 120 hours off. At the five week/35-day level the numbers are even closer. Police officers will have 200 hours off. Firefighters, depending on platoon, will have 202, 206, or 216 hours off. We find that distinction insufficient to make a difference.

~~Mr.~~ Markle dissents.

B. Clothing Allowance

The parties' old contract provided a \$200 clothing allowance for firefighters and one of \$100 for dispatchers, in each case paid semi-annually "upon presentation of properly signed

and sworn vouchers." To reflect price increases which have put the cost of mandatory uniform elements far above the allowance (Union Exhibit 5), the parties negotiated a new allowance of \$400 for all uniforms. That figure is identical to the \$400 clothing allowance which police employees have been receiving since 1981. In addition, the City also buys and maintains raingear for its water department personnel.

City Exhibit 1 shows the City Council would have only approved \$300 for firefighters and \$150 for dispatchers. The mayor agreed to present \$300 as the appropriate clothing allowance for all.

Again, nothing appears in the record to contradict the persuasiveness of the clear comparability data which support the results of the parties' negotiations. We shall accordingly award the \$400 figure as the appropriate clothing allowance.

C. Longevity

The parties' old contract provided annual longevity payments of \$200 after 10, 15, and 20 years' service. Effective January 1, 1982 police employees received \$250 longevity payments after 7, 11, and 15 years. Water department employees received \$300 after 15 years.

The parties negotiated a new benefit identical to that police enjoy. The Council refuses to approve, seeking to keep

firefighters at their old, 10, 15, and 20-year schedule for the new, \$250 payments.

Here too nothing appears in the record to undercut the strong reasons for granting the negotiated benefits. The most comparable City employees already have them, and they exist for the appropriate reasons of providing some compensation for the relative lack of promotion opportunities in the Kingston fire service. We therefore shall award the negotiated annual longevity benefit of \$250 after 7 year's service, an additional \$250 after 11 years, and an additional \$250 after 15 years.

D. Holidays

The parties' agreement provided eight paid holidays for non-veterans and ten for veterans. Their negotiated agreement increased those totals to the same which police employees had enjoyed since January 1, 1981: thirteen for non-veterans and fifteen for veterans. Those numbers are on the same order of magnitude as those which obtain in other City bargaining units. Water department employees get 14 1/2 paid holidays per year, and the CSEA unit enjoys 14.

Notwithstanding those equal benefits enjoyed by comparable employees -- and which the Council had approved for them -- the Council opposes granting them to firefighters. As City Exhibit 1 shows, the Council suggests limiting firefighters to their old, "eight-and-ten" numbers but reducing their

per-day credit from twelve hours to eight. The simple answer is that nothing in the record before us justifies such a departure from comparability and past dealings. We shall therefore award the holiday benefit negotiated by the parties.

E. Life Insurance

The newly-negotiated life insurance benefit of \$50,000 for bargaining unit personnel will require an annual premium of \$17,000. The City currently provides similar benefits for police in the amount of \$10,000 and for its civilian personnel as well.

City Exhibit 1 discloses that the Council had requested a cost comparison at its July 22 meeting with the Mayor. At our hearing Mayor Quick reported no continuing objection to this benefit, and we find none in the record.

This life insurance benefit is justified by the extraordinary hazards of firefighting service and is not out of line with similar benefits provided by comparable communities. We shall therefore confirm it in our award.

F. Meal Provisions

The parties' expired contract provided a maximum meal benefit of \$2 for personnel held over on duty for more

than two hours or for extended emergency recalls. The parties' tentative agreement raised that benefit to a maximum of \$4.

The record before us is uncontroverted that these meal allowances are paid in relatively unusual circumstances of emergency recalls or holdovers for multiple alarm fires. They therefore comprise a relatively insignificant cost item, and the increase is more than justified by the steady rise in the food portion of the Consumer Price Index. Our award shall therefore sustain the Meal Provision increase.

G. Emergency Medical Service Program

New Article XXV⁷ of the parties' tentative agreement requires the City to reimburse unit personnel for expenses of tuition, books

[GO TO PAGE 10]

and equipment incurred in connection with successful training for certification as Emergency Medical Technicians. About two-thirds of the Department already have EMT certificates. The maximum cost of this benefit cannot therefore exceed the \$67 cost times the twenty unit members not yet certified.

We find this benefit fully justified by comparability data, for 80% of New York State cities pay for such courses and upgrading; and two, Utica and Ithaca, reflect the increased value of such members' service by providing salary increases as well. Providing such life-saving skills certainly serves the public welfare and fulfils another Taylor Law criterion.

At the hearing Mayor Quick reported the Council's concern that the language of this benefit not be interpreted so broadly as to extend it beyond the professional department nor to allow negotiation of additional salaries for trained personnel during the agreement's term. We find no problem with that concern and will so provide in our award.

Member Gollnick dissents.

H. Manpower

New Article XXIV of the parties' tentative agreement confirms in writing what has been observed as a "gentlemen's agreement" between the City and the Union: that there will be twelve men on duty at all times. The parties' new agreement excludes dispatchers

from the calculation and will require an additional firefighter to meet the minimum.

A majority of us find that agreement justified by the public welfare, by comparability data and by past dealings of the parties. First, public welfare requires that manpower guarantee. Fire authorities such as the Insurance Service Office and the National Fire Protection Association establish six paid members as the recommended manning level for each unit. (Union Exhibits 9 and 10). The American Insurance Association recommends minimum manning for all units at all times of four members including officers. (Union Exhibit 8.) Finally, in 1976 (when Kingston had six more firefighters than its present complement of 49) the New York State Department of State's Division of Fire Prevention and Control issued its "Proper Report" covering the Kingston Fire Department's administration, organization, resources, training, inspection and fire prevention. That report concluded that Kingston needed at least 20 more firefighters to ensure adequate coverage of four members per unit. (Union Exhibit 7.)

Kingston's present unit manning falls far below those standards. Here are the current manning levels per platoon:

<u>Unit</u>	<u>Number</u>
<u>Company No 1 (Central)</u>	
Engine: Driver	
Officer	2
Truck: Driver	1
<u>Company No 2 (Frog Alley)</u>	
Engine: Driver	
Officer	2
Truck: Driver	
Tillerman	2
<u>Company No 3 (Rondout)</u>	
Engine: Driver	
Officer	2
<u>Chiefs' Car</u>	2
<u>Dispatcher</u>	1
Total	<hr/> 12

Establishing a minimum manning level therefore serves the public interest in adequate fire protection as well as the legitimate safety concerns of the firefighters involved.

Second, this provision is in line with similar minimum manning provisions in fire contracts in comparable communities. Nearby Newburgh has such a provision as do the cities on the larger

end of the range such as Schenectady and New York.

Finally, there is precedent for this benefit in the parties' past dealings. Their 1974-75 Memorandum of Agreement imposed a 14-man minimum, two above that at issue here.

We also find the overtime cost of this benefit will not be substantial. At the hearing all agreed that the City has been meeting the "gentlemen's agreement" without problem and that what overtime costs have occurred have resulted from two multiple alarm blazes and from the undermanning of one of the Department's four platoons.

The Council opposes this benefit most strongly. The concern it expresses is with "locking in" what can be an expensive program if platoon manning levels drop. A majority of us reject that concern as ill-founded, given the parties' past practice as well as the realistic minimum required for adequate fire protection in the City of Kingston. Our award will therefore include this Manpower article.

Member Markle dissents

I. Salaries

The parties' tentative agreement provides for salary increases of 7% effective January 1, 1982 and 9% effective January 1, 1983. City Exhibit 1 records the Council's willingness to accept those figures, which we find appropriate in light of comparability data and the City's ability to pay.

Compared with nine other cities in New York State with population between 15,000 and 35,000 (Kenmore, Newburgh, Middletown, Batavia, Garden City, Ithaca, Peekskill, Port Chester, and East Chester), Kingston (population 25,000) ranks dead last in base salaries for firefighters. Kingston's firefighters also earn less than skilled building trades employees, utilities employees, postmen and U.P.S. drivers in the same area.

Moreover, the City has negotiated (and the Council has approved) comparable increases for other City employees. Police received 9% in 1981 and 9% in 1982; and on August 4, 1982 the Council approved a three-year contract with CSEA granting annual increases of 9%, 9%, and 9%.

Finally, the record is clear that the City of Kingston can amply afford the cost of the benefits provided hereunder. We find credible the computations of municipal finance consultant Edward J. Fennell, who testified that the costs of increases in salaries (which include vacations), overtime pay, retirement accumulation, longevity increments, and holidays will be \$94,724 in 1982 and \$103,249 in 1983.

That first-year figure is easily covered by the \$135,000 contingency fund built into the Fire Department Personal Services budget for 1982 (Account #1900). The second year's increase is likewise within available resources uncommitted in the 1982 budget. They include \$451,323 of unanticipated Small Cities Aid as well as a consistent history of General and Federal Revenue

Sharing Funds surpluses created by conservative estimates of revenues and expenditures. Of the 1981 surplus fund balance of \$2,669,708.84, almost \$988,000 remained unappropriated for the 1982 fiscal year. There accordingly appears to be sufficient funds available to finance the benefits required by this award without increasing the City's taxes or reducing its services.

J. Interest

The Union charges that the Council's refusal to approve the tentative agreement it negotiated with Mayor Quick was an egregious political maneuver which unjustly delayed payment of firefighters' salary increases. The Union therefore seeks payment of the interest which the City earned on those funds retroactive to the November 10, 1981 execution of its tentative agreements.

Union Exhibit 15 establishes that the City earned between 10% and 13.8% on its money in each of the first eight months of 1982.

There is some justice to the Union's claim. Whatever the Council's motive may have been, its refusal to approve the parties' negotiated agreement singled the firefighters out. They were refused the benefit of a settlement clearly in line with those of the City bargaining units which the Council did approve without apparent question. That action by the Council deprived the firefighters of the use of their salary increases and permitted the City to finance the cost of this package by investing that money

for its own account. Under these circumstances we shall award the firefighters interest in the annual amount of 10% compounded^{ed} monthly on the retroactive portion of the salary increases required by this award.

Member Markle dissents.

K. Residual Matters

As to all other issues in this matter we find nothing in the record justifies changing the remaining terms of the parties' expired collective bargaining agreement, which they in fact agreed to continue in their tentative agreement executed November 10, 1981 and in evidence here as Union Exhibit 6.

By reason of the foregoing I issue the following

AWARD

1. Between January 1, 1982 through December 31, 1983 the parties shall give full effect as their collective bargaining agreement to a certain document in evidence in this proceeding as Union Exhibit 6, entitled "Agreement between the City of Kingston and the Kingston Professional Fire Fighters Association Local 461, January 1982-December 1983," subject to the further provisions of this Award.

2. Article XXV ("Emergency Medical Service Program [EMS]") of the said agreement shall be amended (a) to substitute the words, "Kingston Fire Department," for the word, "City," in

the two places it appears, and (b) to add the following sentence, "This benefit shall not be used to negotiate additional salaries because of E.M.T. training during the term of the Agreement."

3. An additional Article shall be added to the said agreement in the form required by Section 204.a of the Civil Service Law, although this panel recognizes that no legislative approval is necessary for the implementation of this interest arbitration award.

4. On all retroactive payments to bargaining unit personnel required by this Award the employer shall pay interest at the annual rate of 10% compounded monthly beginning January 1, 1982.

Dated: October 25, 1982
Schenectady, New York

JOHN E. SANDS, Chairman and
Public Member

Dated: October 25, 1982
Albany, New York

Robert Gollnick, Employee
Organization Member

Dated: October 25, 1982
Kingston, New York

F. Joseph Markle, Public
Employee Member

AFFIRMATION

We hereby affirm pursuant to CPLR 7507 that we are the Public Arbitration Panel in the above matter and that we have executed and issued this instrument as our Opinion and Award.

JOHN E. SANDS

ROBERT GOLLNICK

F. JOSEPH MARKLE