

NEW YORK  
REGULATION

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD  
In the Matter of the Interest  
Arbitration  
  
Between  
  
NIAGARA FALLS UNIFORMED FIRE-  
FIGHTERS ASSOCIATION, LOCAL 714,  
IAFF, AFL-CIO  
  
and  
  
CITY OF NIAGARA FALLS

PERB Case No.  
IA82-43  
M82-532

Before: The Public Arbitration Panel consisting of:

Norman Brand, Public Member and Chairman  
Jacob A. Palillo, Employee Member  
Thomas Langley, Employer Member

On March 8, 1983, 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." In accordance with our statutory authority, we conducted formal hearings on May 26 and 27, 1983, June 8, 1983, and June 17, 1983, all in the City of Niagara Falls. We subsequently met on August 23, 1983, in executive session. At the formal hearings both parties appeared through their representatives and were given a full and equal opportunity to

present documentary and testimonial evidence, and to examine and cross-examine witnesses under oath. Both parties submitted pre-hearing briefs. The Panel informed the parties that any factual material contained within the briefs would be considered accurate unless challenged or contradicted at the hearing. In our executive session both party appointed arbitrators indicated the willingness of those appointing them to have certain issues properly before the Panel returned to them with the understanding that they were to be withdrawn from collective bargaining. As a result of returning those issues to the parties, the Panel was able to reduce the matters upon which it must award from over 50 to the following:

City Issues:

12. Work week for non-line personnel (Section 6.3)
17. Grievance procedure costs (Section 9.2)
18. Vacation accumulation (Section 10.2.8)
19. Vacations - new employees (Section 10.2.11)
20. Sick leave verification (Section 10.4.5)
22. Personal leave (Section 10.6.2)
23. Hospitalization (Section 11.4)
24. Duration of Agreement (Section 17.1)
25. Re-openers (Section 17.2)
27. Grievance procedure (Schedule B, Section 2(h))
28. Schedule B (Section 4.C.)

Firefighter Issues:

1. Duration of contract
2. Wages (Section 7.1; Section 7.2)
7. Longevity increment (Section 7.3)
8. Insurance (Section 11.1)
9. Holidays (Section 10.1)
10. Holiday pay (Section 10.1.1)
11. Holiday pay - Fire Alarm Operators (Section 10.1.2)
12. Holiday pay - non-line personnel (Section 10.1.3)
15. Agency fee
16. Retirement (Section 8.1)
25. Sick leave credit (Section 10.5.1)
30. "Scott Mechanic" (Job Description)

- 33. Medical coverage upon retirement  
(Section 11.2)
- 35. "Favored Nations" Clause
- 42. Assistant Fire Mechanics

The Panel has carefully considered each of these issues in light of the statutory criteria contained in Section 209.4(c)(v) of the Civil Service Law. These criteria are:

The Public Arbitration Panel shall make a just and reasonable determination on 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 interest 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 agreement 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 our consideration we have reached the following conclusions.

1. Wages (Schedule F)

The expired agreement contains three-step wage schedules for firefighters, fire alarm operators, and non-line personnel. The Union proposed a 10 percent across the board wage increase,

together with \$500 increments in each step on January 1, 1983, and \$500 increments in each step on July 1, 1983. The City's offer, first made in mediation, was a 2 percent increase on January 1, 1983, and a 5 percent increase on July 1, 1983.

(a) Comparability

Two types of comparison are important in these proceedings. First, a comparison of the wages of Niagara Falls firefighters with other firefighters in similar size communities, and second, a comparison of the increase sought by the firefighters with the increases negotiated by other employees of the City of Niagara Falls. The City and the firefighters used almost the same comparison cities (Schenectady, Troy, Mt. Vernon, Utica, Binghamton, Tonawanda, North Tonawanda, Albany, and Buffalo). These were cities with approximately the same population as Niagara Falls, and other communities in Niagara County. Since the comparison cities all show 1983 top grade salaries, it is necessary to impute an increase over 1982 Niagara Falls top grade salaries, in order to make valid comparisons. Currently, top step firefighters in Niagara Falls receive \$18,612 a year. The following table shows what they would receive in 1983 under various salary proposals and what the percentage increase over 1982 would be.

IMPUTED INCREASES FOR FIREFIGHTER SALARIES

City Mediation Offer:

1/1/83: 2%	Percent increase received in 1983: 4.5%
7/1/83: 5%	Payout for 1983: \$838
	Actual salary received in 1983: \$19,450
	Percent increase over 1982 base: 7% (\$1,303)
	Salary level after increases: \$19,915

Firefighter Proposal:

1/1/83: 10%	Percent increase for the year: 14%
1/1/83: \$500	Payout for 1983: \$2,606
7/1/83: \$500	Actual salary received in 1983: \$21,218
	Percent increase over 1982 base: 15.4% (\$2,866)
	Salary level after increase: \$21,478

According to the figures provided by the parties, the average top step salary in the communities used for comparison is \$19,996. It is impossible to determine what relationship Niagara Falls salaries bore to those in the comparison group in 1982. However, it is clear that absent a 1983 wage increase, Niagara Falls firefighters will not be comparable to firefighters in like jurisdictions, or in the locality. Thus, on the basis of a comparison with other firefighters, Niagara Falls firefighters are entitled to an increase for 1983.

As a second comparison the Panel has considered the settlements reached with other City Unions. The 1983 salary increases in other units ranged from 3.4 percent for the Police Club to 5.5 percent for the Fire Officers Association. The total percentage increase over payroll for 1983 (including new fringes) ranged from 5.5 percent for Local 15315, United Steel Workers of America to 5.8 percent for the Police Club. All of the percentage increases for the City's Union were close to 5.5 percent. Indeed, it was the uncontradicted testimony of the City that because of its fiscal condition it tried to provide comparable increases among the bargaining units. It sought, it said, to distribute its assertedly limited resources as fairly as it could. Thus, in terms of comparability with other City Unions, the Panel finds strong reason to hold the firefighter increases close to the range

of settlements for other City employees. Indeed, the Panel was provided no convincing arguments on behalf of the firefighters which would lead it to conclude that they should receive increases that are significantly different from those received by other unions, particularly the uniformed services.

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

The information provided the Panel under this criterion fell into two broad areas: Public Interest and Ability to Pay. First, the interest and welfare of the public was described from two perspectives. The firefighters convincingly argued, and the City certainly did not deny, that the citizens of Niagara Falls deserve to continue to have the kind of high quality firefighting workforce that they have had in the past. This means that it is in the interest and welfare of the public to pay wages that will continue to attract and retain quality employees. The other perspective, provided by the City, was the overall tax burden imposed upon the citizens of Niagara Falls. It is shocking. Niagara Falls has the highest taxes, on an equalized basis, of any City in the County. In addition, Niagara Falls has water and sewer rates that are currently almost double those of comparable communities. Furthermore, these rates are projected to increase at an accelerating pace over the next few years. These increases will be necessary simply to keep even with the improvements that the City has been mandated by federal and state authorities to make in its current, non-conforming, sewer treatment plant. Thus, in terms of the interest and welfare of

the public, the Panel has considered both the need to have a high quality firefighting force, and the terrible tax burden under which the Niagara Falls taxpayers struggle. It is our judgment that any increases afforded the firefighters must be within monies available to the City without short term borrowing, and without tax increases directly attributable to such wage increases.

The City's ability to pay is severely limited. While it is more than \$16 million short of its constitutional tax limit, and while it has the ability to borrow short term, it is also apparently undergoing a long term decline which imposes stringent fiscal constraints. Niagara Falls is a city whose population is shrinking and whose industrial base is disappearing. The City is changing from an industrial to service based economy, in which the jobs that remain will pay less than the jobs that leave. As the population declines, it is composed increasingly of older people. During the past 20 years the percentage of the population over 60 has almost doubled. In addition, Niagara Falls has the dubious distinction of having the highest unemployment rate in the state. Recent plant closings have assured that unemployment will continue to be high.

An analysis of the 1983 budget showed no unappropriated fund balances against which raises could be charged. Contingency funds have been exhausted. In addition, the enterprise funds represent a cash flow drain, as a result of the failure of water and sewer rates to keep up with the operating costs of those enterprises. The City admitted that the money for negotiated raises is contained in so-called "soft appropriations" -- those

budgeted appropriations which exceed actual needs. It has already funded negotiated increases that range from 5.3 percent to 5.8 percent for 1983 out of these appropriations. Indeed, the firefighters' fiscal expert identified a soft appropriation in the retirement and social security account which would, in itself, pay for the 1983 firefighter increase we have awarded. That being so, although every soft appropriation was not identified, the Panel has determined that the City does have the ability to fund 1983 increases that are commensurate with those provided other City employees.

(c) Peculiarities of Firefighting

Firefighting is dangerous. Each year firefighters and miners compete for the dubious distinction of having the highest mortality rate per thousand of all occupations. Since firefighters are engaged in a uniquely hazardous occupation, it is the Panel's judgment that the Niagara Falls firefighters deserve to have compensation levels that are comparable to other firefighters.

(d) Terms of Past Collective Bargaining Agreements

None of the evidence at the hearing indicated that the firefighters have been historically mistreated. Rather, on the whole, their wages have been comparable with those of other firefighters and other city employees. However, the firefighters did receive a lesser salary adjustment than the Fire Officers in the last round of bargaining. While the City correctly pointed out that the higher salaries of Fire Officers bear a relationship to their greater responsibilities, it did not explain the bonus

added to the Fire Officers 6 percent salary adjustment, which was not added to the firefighters salary adjustment. Thus, the Panel can see some small element of inequity arising from previous collective bargaining agreements which needs to be remedied in this round.

Conclusion:

The Panel finds that the appropriate increase in wages for 1983, in accordance with the statutory criteria, is as follows:

January 1, 1983: 4 percent increase on 1982 base.  
Increase to be fully retroactive.

July 1, 1983: 3 percent increase on January 2, 1983, base. Increase to be fully retroactive.

This increase will amount to a 5.5 percent 1983 payout, consistent with the City's needs. However, it will be a 7 percent increase in overall percentage, which will put the top step firefighter at \$19,915.00 per year. This is consistent with the average top step of \$19,996.00 per year in the comparison cities.

2. Duration

The parties last contract was for two years. The firefighters proposed a one-year contract. The City proposed a one and one-half year contract, arguing that this would bring the negotiating schedule into synchronization with the budget making process.

(a) Comparability

Firefighter contracts vary from one to three years. The City's contracts with other Unions are one, two, and two and one-half years.

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

The interest and welfare of the public are served by longer contracts in times of fiscal stability and shorter contracts in times of fiscal instability. The City cited many uncertainties in its fiscal outlook for the immediate future. That uncertainty suggests a shorter contract term.

(c) Peculiarities of Firefighting

The hazards of firefighting have no significant bearing on the duration of the contract.

(d) Terms of Past Collective Bargaining Agreements

The City and the Firefighters have had contracts of varying length during their relationship. From the firefighters perspective a shorter contract will give the City an opportunity to clarify its financial picture so that it is better able to bargain over certain matters which were dropped during this round of collective bargaining.

Conclusion:

The Panel finds that a one year contract will meet the needs of the firefighters and be consistent with the fiscal uncertainty of the City.

3. Longevity Increment

The expired agreement does not contain any provision for increments to be paid employees with 30 or more years of service. The firefighters proposed adding a \$500, 30 year increment. They subsequently amended that to a \$215, 30 year increment.

(a) Comparability

None of the cities in the comparison group had 30 year increments for firefighters. On the other hand, both the Fire Officers unit and the Police Captains and Lieutenants unit in the City of Niagara Falls have 30 year increments. The Fire Officers have a 30 year increment at \$215.

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

It does not appear, from the evidence, that the interest and welfare of the public would be significantly affected by this demand.

Nor does it appear that there are any employees currently qualified for the 30 year increment. Thus, there is no immediate fiscal impact to this demand. Moreover, the City contended that those employees who would stay in service that long were likely to be supervisory employees who already have the increment in their contract.

(c) Peculiarities of Firefighting

No significant relationship was shown between the hazards of firefighting and the demand.

(d) Terms of Past Collective Bargaining Agreements

No evidence was presented on the history of negotiations on this issue.

Conclusion

The Panel finds that a 30 year increment of \$215 should be added to the contract. Including the increment will make the firefighters contract consistent with those of other uniformed

forces in the City of Niagara Falls without having any fiscal impact on the City.

4. Hospitalization/Insurance (Sections 11.1 and 11.4)

The expired collective bargaining agreement requires the City to provide hospital and surgical benefits at no cost to the firefighters. They currently receive Blue Cross/Blue Shield with a one dollar co-pay prescription plan and a \$250,000 major medical rider (with the cost of that shared by the City and the employee). The City proposed requiring employees to pay the full cost of any increases in insurance costs occurring after January 1, 1983. The Union proposed that the City provide it with a no-deductible plan, "together with a high level dental plan, eyeglass rider, and family plan dependents in college until age twenty-three (23) riders and the major medical plan be One Million Dollars (\$1 million) coverage."

(a) Comparability

The City did not provide any examples of other firefighters who paid increases in the cost of their insurance. The firefighters provided no comparison of the medical benefits received by firefighters in the comparison cities. However, they did provide a comparison with other City employees. No City employee have the eyeglass rider. All other City employees have some form of dental insurance. The Fire Officers and the Police Club received dental insurance during this round of negotiations. Each received it as part of a multi-year agreement. All of the uniformed services have Rider 8 (benefits for dependents in college), with Fire Officers and the Police Club having achieved

it in this round of negotiations through two year, or two and one-half year contracts. The only other City unit with a full pay major medical (at \$250,000) is the Police Club; they will begin to get it in 1984 as the result of their two year agreement.

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

No evidence was presented as to the interest and welfare to the public. However, the parties agreed to the following percentages as representing the cost (in terms of 1982 payroll) of each of the items requested by the firefighters.

PERCENT OF 1982 PAYROLL

Major medical	.25 percent
High Level Dental	.45 percent
Eyeglasses	.31 percent
Rider 8	.10 percent

Each of these items has so small a cost that it would be impossible to say that the City could not afford to pay for any one of them. However, the Panel has been mindful of the overall costs of this agreement to the City. Therefore, we have treated all of the firefighter demands with an economic impact as a whole. Thus, keeping in mind the City's overall ability to pay, we have concluded that a portion of this demand can be granted.

(c) Peculiarities of Firefighting

No evidence was provided to indicate the impact of the peculiarities of firefighting on these demands.

(d) Terms of Past Collective Bargaining Agreements

The total hospitalization/insurance benefits enjoyed by the firefighters have been developed incrementally, through collective bargaining over the years. Since that is the

pattern in the past, we see no reason to change it.

### Conclusion

The Panel deems it inappropriate to provide the firefighters with all of the same benefits in a one year contract as have been provided other uniformed services in multi-year contracts. However, we are mindful that it would be unfair to the firefighters to allow their benefits to become completely out of line with those of other City employees. In addition, we have been mindful of the overall financial constraints of the City. Therefore, we direct that the firefighters be provided a \$50 deductible Blue Cross/Blue Shield major medical plan (identical to that provided the Fire Officers) at no cost to the firefighters. In addition, they shall be provided with Rider 8. We note that these two benefits are the least costly of those requested.

#### 5. Sick Leave (Section 10.4.5 and Section 10.5.1)

The expired contract contains the following language:

10.4.5 A department head may recommend disciplinary action when he has reviewed the employees sick leave record taking into account the employees pattern of absenteeism, efforts to improve attendance and any extenuating circumstances which may be present.

The City proposed changing this to read:

The Fire Chief may recommend disciplinary action when he has reviewed the employees absentee record, taking into account unusual circumstances of a particular absence, the employees pattern of absenteeism, efforts to improve attendance, and any other circumstances which may be present. (Emphasis added)

The expired agreement also provides that employees may be paid for 20 percent of their sick days at termination of service. Firefighters proposed that Section 10.5.1 be amended to

provide payment for 100 percent of sick leave upon termination of service.

(a) Comparability

The City provided no examples of contracts with specific language providing for disciplinary action where there were unusual circumstances surrounding a particular absence. Nor did the firefighters provide any examples of contracts with 100 percent sick leave payments.

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

Neither side showed how its proposal was related to the interest and welfare of the public. Nor did either side provide cost figures for its proposals.

(c) Peculiarities of Firefighting

No evidence was presented, for either proposal, showing its impact on the peculiar hazards of firefighting.

(d) Terms of Past Collective Bargaining Agreements

No evidence was presented indicating that the terms of past collective bargaining agreements had any bearing on either proposal.

Conclusion

Neither side presented any evidence, in accordance with the statutory criteria, that would lead the Panel to recommend the change it proposed. Therefore, the Panel recommends no change in either of these Sections.

6. Vacations, (Section 10.2.8 and Section 10.2.11)

The expired agreement contains provisions permitting the

accumulation of up to 12 weeks of unused vacation. It also contains a schedule of annual vacation earnings ranging from two weeks of vacation after a year of service to six weeks of vacation after 25 years of service. The City proposes limiting vacation accumulation to one year's worth of vacation, without seeking to limit vacation already earned and accumulated. In addition, the City proposes limiting employees hired after January 1, 1983, to four weeks vacation.

(a) Comparability

The City provided no evidence to indicate that firefighters in any other City have limitations on their accumulation of unused vacation. Both the Fire Officers and the Captains and Lieutenants have limitations on the amount of vacation they can accumulate.

Out of the comparison group only Binghamton provides any employees a maximum of four weeks of vacation. All other City Unions limit the amount of vacation which can be earned by employees hired after a contractually specified date. It appears from the date that this was a City priority in 1979 and 1980. The provision for reducing the maximum vacation that could be earned by new employees in the Police Club contract was added through arbitration.

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

The City argues that the elimination of future benefits is in the interest of the public in that it ultimately allows the City to control its costs, thereby keeping taxes at a

lower rate. No evidence was provided on the future cost saving which would be accomplished by either of these proposals.

(c) Peculiarities of Firefighting

No evidence was provided to indicate a relationship between this demand and the peculiarities of firefighting.

(d) Terms of Past Collective Bargaining Agreements

No evidence was provided as to the specific collective bargaining history of these proposals. However, from the uniformity of dates in the other contracts it appears that the negotiation of these provisions was a City priority during a previous round of negotiations.

Conclusion

While there is certainly a comparative basis for both of these demands, the Panel recommends neither. As to the first, we note that officers in both of the uniformed services are likely to be long term employees. Thus, it is to be expected that they would have large vacation banks -- which would not be in any way affected by the addition of these provisions. As to the second, while the comparison with other City employees is extremely forceful, there is an obvious bargaining history which has not been addressed. We are mindful of the fact that collective bargaining may involve compromises in one area in return for granting concessions in another area. Rather than involve ourselves too deeply and disruptively in the bargaining process, we decline to recommend this proposal.

7. Personal Leave (Section 10.6.2)

The current agreement provides no limitation on the

number of employees who may ask for, and must be granted, personal leave on a particular day. Nor does the Chief have any ability to take into consideration the number of people who will be out on a given day, prior to granting personal leave. The City proposes adding a new sub-section to read as follows:

Personal leave days requested shall be granted on a first come, first serve basis, at the discretion of the Fire Chief or his designee, based on prevailing force and work load.

The City's explanation of this demand indicated that its purpose was to permit the Chief to assess work load needs in light of the number of firefighters out due to vacation or sickness, prior to granting personal leave days.

(a) Comparability

The City provided no evidence to indicate that any other firefighters had this limitation. On the other hand, the Police Club contract sets an absolute limitation on the number of people who can be off. That is, no more than 35 percent of the total shift may be off, for any reason.

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

The City argued that this proposal would be in the interest of the public since it could potentially cut costs without adversely affecting firefighters. It noted that during the past year the City expended \$17,482.50 in overtime costs as a result of employees taking personal leave. It argued that by permitting the Chief to deny personal leave in situations where granting it would require replacing a firefighter at the overtime rate, significant money could be saved. It should be noted,

however, that the City did not assert that the Chief or his designee would be required to deny personal leave in every situation in which it would require replacement of the firefighter at the overtime rate.

(c) Peculiarities of Firefighting

Because firefighting is a 24-hour a day job, and because certain minimum levels of fire protection must be provided at all times, the personal leave provision in the firefighters contract may require using overtime to maintain staffing levels.

(d) Terms of Past Collective Bargaining Agreements

No evidence was presented to indicate that the terms of any past collective bargaining agreement had a bearing on this personal leave provision.

Conclusion

The Panel finds that the language proposed by the City should be included in the new agreement. Given the way in which the City has said the provision will operate and given the large savings that can be made, it is appropriate to include this provision. The Panel has taken the annual savings (calculated by the City as \$17,483) which are generated by this change into consideration in determining the City's ability to pay other benefits requested by the firefighters and granted by the Panel.

8. Holiday Pay (Section 10.1, 10.1.1, 10.1.2, 10.1.3)

The contract currently provides that firefighters will have 11 "guaranteed holidays with pay" each year. It provides for line personnel to be paid double time for all hours worked on the holiday. A firefighter who falls into the category of "line

personnel" and who does not work on a holiday is still paid "holiday pay" for 10 hours, amounting to 10 hours at double time. Fire Alarm Operators receive double time for hours they work on a holiday, but no compensation above their annual salary if they do not work on a holiday. Non-line personnel are generally off on holidays and simply receive their normal pay. However, if they work on a holiday they get compensatory time off.

The firefighters propose increasing the number of holidays to 12 by adding Good Friday. In addition, they propose paying firefighters at time and one half for 12 hours for any holiday worked. That, in effect, amounts to two and one half times pay for holidays that are worked (normal annual salary, plus 1.5 times 12 hours straight time pay.) For those holidays that a firefighter does not work they propose he receive an additional 12 hours pay (normal annual salary, plus 12 hours at straight time). The same theoretical basis is carried through in the demands for Fire Alarm Operators and non-line personnel. That is, Fire Alarm Operators who work on a designated holiday will be paid time and one half for all hours worked on that holiday (normal annual salary, plus 1.5 times hours worked). Fire Alarm Operators who do not work on a holiday will be paid holiday pay equal to their regular days' pay, based on a 40-hour week (normal annual salary, plus 8 hours at straight time). Non-line personnel who work on a designated holiday will be paid time and one half at their daily rate of pay, based on a 40-hour week (normal annual salary, plus 1.5 times hours worked at straight time). Non-line personnel who do not work on a holiday will be paid for an additional day at

their daily rate of pay, based on a 40-hour week (normal annual salary, plus 8 hours at straight time).

(a) Comparability

No specific evidence was presented showing the number of holidays or method of payment in other firefighter units. However, the firefighters introduced evidence to show that all other City employees have 12 paid holidays. In addition, all of the uniformed services in the City of Niagara Falls receive two and one half times their normal pay when they work on a holiday. The Fire Officers are paid for 12 hours, regardless of whether they work a 10 or a 14 hour shift on a particular holiday.

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

No evidence was presented on the interest and welfare of the public. However, the City argued that the cost of this benefit should be taken into account in terms of the overall settlement made. That is, while it did not argue that it had no ability to pay this particular benefit, it did argue that the Panel must consider the totality of benefits accorded the employees. Neither side provided adequate cost data on this proposal. The Union did not cost out the proposal at all. The City made some calculations based upon all employees (line and non-line) working six holidays and failing to take into account the amount presently paid employees for holidays. Employees are currently paid the equivalent of double time for working on holidays. Since firefighters work either a 14 or 10 hour shift, over the course of the year their holiday pay is likely to average

12 hours per holiday. Thus, the true incremental cost of this proposal is an extra half day's pay. Using the City's figures and assuming that every employee in the unit will work the extra half day (which assumption should account for the increases for non-line personnel) the formula looks like this: Six holidays x \$36.64 (4 hours pay at the City's figures) x 123 (number of employees in the unit) = \$27,040. We have used six holidays since that is one-half the twelve we recommend. In light of the monies shown to be available to the City and in light of the overall financial burden imposed by our recommendations, we find that the City has the ability to pay this.

(c) Peculiarities of Firefighting

Since fire protection must be provided 24 hours a day, 365 days a year, firefighters do not have the opportunity to enjoy holidays in the same way as employees who work ordinary 40 hour weeks. Thus, some alternative arrangement is necessary to provide them with the equivalent of holidays. As to those few non-line personnel in this unit, we deem it more appropriate to treat them the same way than to fragment the unit.

(d) Terms of Past Collective Bargaining Agreements

No evidence was introduced to indicate the relevance of prior collective bargaining agreements to this proposal.

Conclusion

The Panel concludes that the firefighters proposal should be included in the new contract. Members of the unit are to receive twelve holidays a year, at time and one-half, as more fully

described in our recitation of the firefighter proposal. Since we have based our calculations of the City's ability to pay on the full year's cost of this benefit, it shall be applied retroactively. Employees shall be paid the difference between the old and new rates for any holidays that occurred prior to this Award. Good Friday 1983 is among the holidays to be counted for this purpose. For firefighters, payment shall be made for 12 hours on each holiday, regardless of the number of hours actually worked.

9. Grievance Procedure (Section 9.2 and Schedule B)

The expired agreement provides, in Section 9.2:

If the City fails to comply with an arbitrator's decision in a grievance arbitration, the City shall assume the costs of litigation of the Union if the arbitrator's decision is upheld and the City is enjoined to comply.

The contract also contains a broad definition of grievances, and a third stage review which is to be conducted within 10 days of the submission of a grievance to the Labor Relations Committee. The City argues that there is no need for the provision on costs, that the grievance definition is too broad, and that the time limit for the third stage appeal is too short.

(a) Comparability

The City contends that since it cannot find other contracts with the language of Section 9.2, it ought to be deleted. The City provides no comparability data for its proposed definition of a grievance. On the other hand, it notes that the change it proposes in the wording of the third stage of the

grievance procedure is the same as in all of the uniformed services contracts and three other city contracts.

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

The City provided neither evidence of how the interest and welfare of the public is implicated nor cost data for any of the proposals.

(c) Peculiarities of Firefighting

No evidence was presented to show a relationship between the peculiarities of firefighting and this proposal.

(d) Terms of Past Collective Bargaining Agreements

No relationship was shown between this proposal and any prior collective bargaining agreement.

Conclusion

The City has failed to provide adequate evidence to support changing any of the aspects of the grievance procedure it has addressed. While it is true that other collective bargaining agreements contain the language the City has proposed for the third step of the grievance procedure, the City has indicated that there is no current problem since the parties have mutually agreed to extensions.

10. Work Week, Non-Line Personnel (Section 6.3)

The expired agreement contains the following language:

All other non-line personnel (those not assigned to an engine or truck company) shall have a work day consisting of seven (7) hours and a work week consisting of thirty-five (35) hours.

The City proposes to change this Section by adding "unless otherwise determined by the Fire Chief" to the end of the

sentence.

(a) Comparability

The City has cited no evidence that any other contract either of firefighters in the comparison group or other City employees provides for the Chief to have complete discretion in scheduling.

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

The City urges that the public would be better served if the Chief had the flexibility to determine more efficient schedules.

(c) Peculiarities of Firefighting

The City provided no evidence to connect this proposal with the peculiarities of firefighting.

(d) Terms of Past Collective Bargaining Agreements

The City provided no evidence connecting this demand with prior collective bargaining agreements.

Conclusion

The Panel finds that this demand should not be included in the contract. While we understand that the discretion to unilaterally set hours could potentially save the City a great deal of money, we also recognize that hours of employment are one of the critical areas for bargaining set out by the Taylor Law. Thus, we will not recommend language which would remove it from bargaining and place it in the unfettered discretion of the City.

11. Scott Mechanics and Assistant Fire Mechanics

PERB determined that both of these proposals are

non-mandatory. Consequently, although the firefighters refused to withdraw them, we decline to consider them.

12. "Favored Nations" and Re-Openers (Section 17.2)

The expired agreement does not contain a "favored nations" clause, protecting the Union against having the City negotiate a more favorable contract with another Union after it has concluded negotiations with the firefighters. Nor does it contain a "zipper" clause, preventing either party from demanding negotiations during the term of the contract. The specific clause the City seeks reads as follows:

The parties hereto acknowledge that this agreement contains all the terms agreed upon between them in negotiations with respect to the terms and conditions of employment and each party agrees that no changes or modifications may be made for the duration of this agreement.

(a) Comparability

No evidence was produced to show what other firefighters or other City employees have in their contracts.

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

Neither the interest and welfare of the public nor the employer's ability to pay was related to either of these demands.

(c) Peculiarities of Firefighting

No evidence showed the relationship between these demands and the peculiarities of firefighting.

(d) Terms of Past Collective Bargaining Agreements

The firefighters indicated they felt disadvantaged in previous rounds of collective bargaining for having settled

early. In particular, they pointed to what they deemed was a better agreement reached between the Fire Officers and the City after the firefighters had signed their last agreement. The City provided no explanation of how its proposal related to the terms of past collective bargaining agreements.

### Conclusion

We recommend that neither clause be included in the agreement. The "Favored Nations" clause is unnecessary since the firefighters are the last to conclude 1983 negotiations, through this interest arbitration procedure. Nor is a re-opener clause appropriate, since the parties have not negotiated as to the matters contained in this award but have had them imposed. Thus, there is no need for the re-opener clause in this contract.

#### 13. Retirement and Medical Coverage Upon Retirement

(Section 8.1 and Section 11.2)

The City currently makes available to firefighters two retirement plans, 384-d and 375-g. The Union proposes adding 375-i to the plans available to members of the bargaining unit. 375-i is advantageous to very long service employees. In fact, there are only two employees who could potentially switch to it. In addition, by operation of law, the City would have to make available 75-i to employees in this unit who are not in the Police and Fire Retirement System.

The City also currently provides hospitalization insurance for employees who retired after January 1, 1981, with 20 years of service. The Union proposes that this Section be amended

to provide hospitalization insurance to any member of the bargaining unit who retires at 55 with a minimum of 10 years of service.

(a) Comparability

The retirement plan known as 375-i is one of the statutory plans made available to firefighters. As such, we can take notice that it is a benefit generally enjoyed by firefighters. On the other hand, the Union pointed to no other group of firefighters or employees of the City of Niagara Falls who had the hospitalization benefits the firefighters proposed.

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

No arguments were made as to how either of these proposals would affect the interest and welfare of the public. The cost of providing the Section 375-i retirement plan would be \$762. No cost data was provided for the demand on medical coverage of retirees over age 55 with 10 years of service. Indeed, it did not appear that the proposed benefit would apply to anyone currently in the bargaining unit.

(c) Peculiarities of Firefighting

No specific evidence was provided showing the relationship between the demands and the peculiarities of firefighting. However, as to unique retirement plans that are statutorily available to firefighters, the Panel must assume that the legislature saw a relationship.

(d) Terms of Past Collective Bargaining Agreements

No evidence was presented connecting the proposals

to past collective bargaining agreements.

### Conclusion

The Panel finds the proposal to provide hospitalization insurance to employees with 10 years of service who retire at age 55 too speculative to recommend. The proposal applies to no one in the bargaining unit; the firefighters argued that some day there might be some new person to whom it could apply. We see no reason to recommend a phantom benefit. We find that Section 375-i benefits are appropriate for firefighters. Since there are certain employees in the bargaining unit who are not in the Police and Fire retirement system, we also find it appropriate that the Employer make available Section 75-i retirement benefits to those employees.

#### 14. Agency Fee

The expired contract contains no language on Union security. The firefighters propose adding a clause to require agency fee payments from members of the bargaining unit who do not choose to belong to the Union. The Union proposal is that the language be written in strict accordance with the Taylor Law Section permitting agency fee agreements to be negotiated between public employers and public employee unions. (Section 208.3(b) Civil Service Law)

##### (a) Comparability

Agency fee agreements, it was argued, are quite common in the public sector. Indeed, state employees are subject to agency fee payments by virtue of the Civil Service Law. All of the uniformed services units with which the City bargains have

agency fee. In addition, three other City units have agency fee agreements in their contract.

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

No evidence was presented to show the interest and welfare of the public is affected by agency fee arrangements. The City's ability to pay is not implicated, since an agency fee arrangement costs the City nothing.

(c) Peculiarities in Firefighting

No evidence was provided to show a connection between this demand and the peculiarities of firefighting.

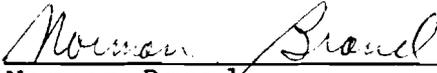
(d) Terms of Past Collective Bargaining Agreements

No evidence of past collective bargaining agreements was introduced in support or opposition to this proposal.

Conclusion

Since six of the City's bargaining units currently have agency fee agreements, and since they have no fiscal impact on the City, the Panel finds that agency fee language shall be included in the collective bargaining agreement. The language shall conform to the Taylor Law.

As the Public Arbitration Panel appointed by PERB we affirm that this is our Award in this case.

  
Norman Brand

  
Dr. Thomas Langley

While I agree with most of the conclusions reached by the Panel, I am unable to join in the Award. To the extent that the Panel has refused to award firefighters the same benefits that are contained in the Agreement between the Fire Officers and the City, I must dissent.

  
Jacob A. Palillo