

RECEIVED

SEP 12 1983

CONCILIATION

.....

In the matter of

The City of Elmira, New York

and

Professional Fire Fighters Association
Local 709 AFL-CIO

.....

Case # PERB 1A-82-45
Contract Impasse
Arbitration

Following several contract negotiation sessions between representatives of the City of Elmira and the Professional Fire Fighters Association, the City, on November 19, 1982, pursuant to Section 205.4 of the Civil Service Law, declared impasse and petitioned the Public Employment Relations Board for establishment of a public arbitration panel. On March 25, 1983, the following panel was designated

| | |
|-------------------|----------------------|
| Carl T. Hayden | PFFA Member |
| Cyril Kuttenkuler | City Member |
| John W. McConnell | Neutral and Chairman |

Hearings were held on the above matter on April 29 and May 7, 1983. James L. Burke, Esq. represented the City. Counsel for the Fire Fighters was Jack Schamel, Esq. Witnesses were questioned and documents submitted in evidence. A transcript of the proceedings was made. Both parties submitted briefs on August 1, 1983. Some delay was experienced in the submission of briefs due to an unfortunate fall suffered by the City's attorney after the transcript had been received. The arbitration panel met on August 24, 1983, and reached conclusions embodied in the following award.

Issues

As a consequence of discussions by the parties after the declaration of impasse and again at the hearing on April 29, 1983, several issues were submitted to the panel for determination. It should be noted also that a number of issues were referred to PERB to determine their mandatory arbitrability. PERB

found the issues arbitrable (Hearing Officer Toomey award dated May 10, 1983)

The parties reached agreement with respect to these latter issues consequently they are not before the panel. The issues to be resolved are

PFFA demands

1. PFFA unit members be covered by GHI health insurance plan, rather than the present super Blue Cross/Blue Shield or, as the City demands, an immediate reversion to either reduced coverage or employee participation in cost for the same coverage. The PFFA also opposes City proposals for self insurance of health benefits.
2. Change in compensation for out-of-title-work. Current contract requires that payment begin "on the first work day of the next three day cycle which follows the out of title assignment". The PFFA proposes that payment begin on the first day of out of title work but be paid only for days worked, not for days off.

As will be noted in the listing of the City demands, it is proposed that the present 10-14 hr. three day tour be changed to match the present police schedule of 8 hour shifts, five days per week. This proposal is opposed by the PFFA and it was not vigorously pursued by the City.

3. Change the present emergency time pay guarantee from the present 2 hours to 3 hours, and, also, change the present quarterly payment of emergency time earnings to monthly payment.
4. An increase of 12% in rates of pay, approximately \$2,215 across the board.
5. Add one additional five year increment (25 year) to the present program of longevity increases at each five year period up to twenty.

City demands

1. The City proposes to investigate, and introduce if cost effective, a program of self insurance covering the present program of health benefits and, in the meantime, to modify the present program of "Super Blue" to "Select Blue" or, as alternatives, to require an employee contribution of 10% instead of the City pay all, **and/or continuation with a corresponding lower salary increase.**
2. The establishment of an 8 hour 5 day/week work schedule instead of the present 10/14 hour 3 day schedule.
3. The City had initially proposed changes in vacation pay, leaves of absence, out-of-title work pay, but offered

little argument in support of these demands, preferring to argue strongly for an award similar to settlements with PBA and CSEA with respect to salary and wage increases of 6% and acceptance of self insurance plus more limited health insurance benefits, that is, "Select Blue" instead of the present "Super Blue".

PFFA Argument

The PFFA urges the panel to direct the City to cover employees and families of the bargaining unit through GHI. The testimony of Mr. Van B. Robinson, Field Director for GHI, showed that coverage equal to and in many cases greater than presently provided under the Super Blue plan could be obtained through GHI at lower cost. The relative costs set forth in the PFFA brief are as follows

| | Single Coverage | Family Coverage |
|------------|-----------------|-----------------|
| Super Blue | \$88.64 | \$210.92 |
| GHI | \$63.19 | \$182.64 |

The PFFA argued that since the present contract specifically identifies the carrier to be used and the level of benefits, the panel has the authority to designate a carrier and the benefits, or to set up a mechanism by which these can be jointly determined.

The City proposals that bargaining unit members share the cost of health insurance similar to the State Employees agreement to pay 10% of cost, or a reduction in benefits as agreed to by the PBA and/or permission for the City to self fund the health insurance benefits are summarily rejected. The PFFA argues that the City has the ability to pay the added cost of maintaining the present level of benefits (see the summary of City financial condition advanced by the PFFA in connection with its salary demands). As for the City proposal that it be given the right to self fund, the PFFA argues that no specific plan has been proposed. The PFFA cannot agree to something it knows nothing about.

The proposal on out-of-title-work, the PFFA contends, would actually save the City money. By paying the higher rate for actual time worked, including

the first day, the City would not be paying for non-scheduled hours as at present. **There would be a distinct saving in the long run, out-of-title work, more than** off-setting the greater cost of short run out-of-title-work.

The PFFA offers very little support for its demand that the emergency call-in guarantee be increased from 2 hours to 3 hours. Fair treatment is the principal argument advanced for its demand that emergency compensation be paid immediately rather than every three months.

Numerous arguments are set forth to justify the PFFA demand for a 12% salary increase or \$2,215 per bargaining unit member. These arguments are organized around the criteria set forth in Section 209(4) of the Civil Service Law as the basis for decisions on money matters in compulsory arbitration. The PFFA presented voluminous evidence through documents and testimony in support of its position.

1. Comparable wages and conditions of employment of other fire fighters.

The PFFA notes that PERB News April 1983 reports that for 1982, fire fighter increases averaged 8.4%. Negotiated settlements averaged 8.6% while arbitration awards averaged 7.8%. In a Fire Fighter case in Binghamton, New York, dated June 29, 1982, a panel awarded 7% for 1982 and 8% for 1983. Lengthy testimony by Donald E. Faughnan, Assistant Chief, Binghamton Fire Department, noted the hazardous nature of the fire fighters' work and the increasing danger due to the amount and sophistication of arson. The dangerous nature of fire fighting more than justifies a wage differential over wages of other employees in public and private employment in the community.

2. Interest and welfare of the public and the financial ability of the City to pay.

This criterion was the focus of most of the PFFA argument. In brief, the PFFA noted that the City had \$1,189,973 in an unappropriated surplus at the end of 1982. Under present law, the City had ~~an additional~~ \$2,422,059 of

additional taxing power. The City had budgeted contingency of \$350,000 for 1983. Customarily the City overbudgets expenditures and underbudgets revenues. Given this financial picture, the City is well able to afford the \$217,285 which is the cost of the 12% salary increase for 99 Fire Fighters and the additional longevity step of \$600 which would be applicable to 15 members of the bargaining unit at a cost of about \$2500.

With respect to the City's arguments regarding its own financial difficulties, the PFFA states that uncertainties concerning revenue sharing, State and Federal Aid, decreasing assessed values of property and decreased sales tax revenue are simply characteristic of all cities. They are not evidence of inability to pay.

3. Compared to other trades and professions, the educational qualifications, the extent of job training and skills, and the physical requirements of the job, the fire fighter occupation has higher standards than other non-professional employment. The accident and disability rates for fire fighters are higher than for any occupation other than mining.

4. While the cost of living has been falling in recent months, salary increases negotiated or awarded in recent years have not been equal to the cost of living which rose so rapidly in the late 1970s and 1980-81. Salaries should be increased to reduce some of that loss.

There is great value in a stable and experienced corps of fire fighters. For that reason an additional step, at 25 years service, in longevity payment (\$600) would assure the continuation of a high quality group of fire fighters.

City of Elmira Argument

The City has proposed that the PFFA accept the same contract settlement that was accepted earlier in the year by the PBA. That settlement included a 6% wage increase effective December 1, 1982, and less extensive coverage in health insurance, namely, "Select Blue" instead of "Super Blue" which would

result in a saving of \$362.00 per fire fighter in premiums. The actual wage increase to the police is \$738 per man or about 4% of present salary. The PBA also consented to self-insurance provided there would be no reduction in benefits.

Rejection of the PFFA wage proposal and demand for other benefits is based upon four factors: 1) the City's limited ability to pay; 2) wage and salary relationships among the City's other employees; and 3) comparability with wages paid by other municipalities; and 4) decline in the cost of living.

With respect to argument (1), the City presented voluminous documentation of the declining economic position of the City. The key facts of this material can be summarized briefly. (City Ex. #8)

- The real estate tax base upon which the City's major source of revenue depends has been declining, but the tax rate has risen 48% in the past four years.
- The index of business activity has dropped to 92% of the 1967 base.
- In November 1982 unemployment in Elmira was 14.9%, equal to the highest rate in the State, in Buffalo, N.Y.
- During the last 10 years 8 major business enterprises in Elmira and adjacent communities have closed resulting in a loss of 4,400 jobs.
- Assessed evaluation of real estate in Elmira has been continuously declining for several years. Large tax payers are requesting downward revisions in their assessments.
- State Aid was frozen at 1978 levels. Special Aid to Cities has been appropriated for 1981, 1982 and 1983. An annual appropriation, made after a city budget has been approved, is not a dependable basis for salary adjustments. A decline of the City population of 29% over the past 30 years probably will result in lower levels of State Aid.
- Sales tax revenues have declined since 1980 due to the loss of numerous large retail establishments and high unemployment. Figures for the first quarter of 1983 show retail sales continuing to decline.
- Since 1973 Federal Revenue Sharing funds have been used for operations of the police and fire departments. Elmira's share of this source of revenue has declined each year since 1978.

2. The City argues that wage adjustments for the PBA and CSEA for 1983 have established a guideline for any salary increase to the PFFA. Historically, the principle of parity has been accepted in police and fire negotiations. Parity was broken early in the 1970s when certain funds became available for firemen at

retirement and again when a reduction in the work week without a reduction in pay widened the differential. In 1975, the PBA negotiated a wage scale \$250 above the PFFA scale, to off-set the unusual benefits received by the firemen. Since 1975, the \$250 differential has been maintained. There is no good reason for breaking this relationship between the two groups. (City Ex. #5, #6)

With respect to the CSEA, a new contract has been negotiated for 1983 providing wage and benefit changes roughly similar, relatively, to those provided in the PBA contract. (City Ex. #5)

3. Salaries of Elmira Fire Fighters are comparable to salaries paid in other cities of similar size. City Exhibit #8 shows that "Elmira was number 4 in starting salary, second after four, ten, fifteen and twenty years". The average Fire Fighter salary in Elmira in 1982 was \$18,341. This is about mid-point of the salaries paid in the cities submitted in Union Ex. #6 if only 1982 (rather than 1983) salaries were used and if time increments were included.

4. The City argues that the Union references to the disparity in previous years between the CPL and the actual wage increases requires closing the gap created in past years, is without substance. The present CPL showing only a 3.5% increase the past year does allow for catch up in relation to the City proposed increase of 6% even with a reduction based upon reduced health insurance.

Finally, with respect to the PFFA argument that the City's ability to pay is clearly evident in the \$1,189,973 unappropriated surplus and the contingency item of \$350,000 in the 1983 budget, the City points out that the \$1,189,973 is needed each year to meet the expenses from January 1 to May 15 when tax collections first come in. The contingency item is a small **hedge** against the uncertainties of many of the City's sources of revenue. Neither of these items is available for salary or benefit increases.

The City urges that the panel make an award similar in salary and benefits

to the PBA settlement, namely, a salary increase of \$1100 per Fire Fighter, a reduction in health insurance coverage from "Super Blue" to "Select Blue" with a saving to the City of \$362 per man per year, and the right to pursue self insurance with certain safeguards as to benefits.

Discussion

The parties agreed at the hearing on a one year contract. (Trans. p.7) In its brief, however, (p. 15) the PFFA argues vigorously for a two year contract on the grounds that a one year contract will be almost terminated before it is in place. An 8% increase in year two was proposed by the PFFA. While there is some logic in the PFFA position regarding a two year agreement, it seemed premature to determine upon a two year agreement with revision on wages alone without argument. Our award, therefore, deals only with the 1983 agreement.

It was obvious by the nature of the hearings and the arguments advanced in briefs that there were only two critical issues in this arbitration, namely, a general increase in wages and a revision in the health insurance provisions of the agreement related to benefits and costs. All other demands made by both the City and the PFFA have been denied except for the PFFA demand that emergency time earnings be paid immediately rather than quarterly as at present. The City offered no objection to this demand. Consequently the panel has directed that emergency time be paid at the next pay period but not later than one month from the time earned.

No persuasive evidence was presented to support the PFFA demand for a change in the method of computing pay for out-of-title work. The obligation to pay a higher rate for every minute of out-of-title work leads only to excessive paper work and disputes over time spent in such work. The present arrangement appears fair and workable.

The Panel finds no basis for changing the present provision for the emergency time guarantee of two hours pay to three hours.

The PFFA presented no evidence whatever to support its demand for an additional step in longevity pay at the 25th year. Although the PFFA argued that the additional step would help retain experienced fire fighters, no evidence was presented to show that such retention was a problem. Certainly there was no evidence that other employees in Elmira or elsewhere enjoyed such benefit.

The City demand for a change in the Fire Fighter work schedule from the present 10-14 hour cycle to a schedule of 8 hour - five day week is denied. No justification other than similarity to the police schedule was advanced in support of this demand.

With respect to the two critical issues, we turn first to health insurance. As noted above, the PFFA demanded that the City change its health insurance carrier to G.H.I. at an alleged saving to the City of \$336 per family per year, \$180 per single employee per year. The City demanded that the PFFA accept the "select blue" rather than present "super blue" coverage at a saving of \$363 per employee per year. In addition, the City demanded that it be permitted to self insure with no reduction in benefits (other than "select blue") and arbitration of disputes regarding the equality of coverage. Two-thirds of the year have now passed during which time members of the PFFA have had the benefit of the "super blue" coverage. There is no way in which the City could gain any advantage from a reduction in benefits to Fire Fighters at this late date except by requiring the firemen to pay the difference between "select blue" and "super blue" (about \$362 on the year) through a retroactive payment with~~out~~ⁱⁿ any salary increases. The PFFA cannot give back the "super blue" coverage it has enjoyed since January 1, 1983. The PBA members had the option of electing lower coverage or less pay. They chose the lower coverage. This option is denied the PFFA. To require the firemen to give back in cash the higher cost of the "super blue" coverage seemed unreasonable and inequitable to a majority of the panel. Normal procedure and PERB policy is that fringe benefits continue unchanged during the period when negotiations are taking place even though they go beyond the termination of the existing contract.

The majority of the panel has denied the City demand for a reduction in health insurance benefits. The panel is unanimous, however, in its opinion that the City should not be foreclosed from seeking a more economical method of providing health insurance. Nevertheless, it must be emphasized that not only the level of benefits but the specific carrier are incorporated in Article XXII of the Agreement. The Union's right to a vote in determining the carrier as well as the benefits must not be lightly dismissed. We have, therefore,

directed that a joint committee of PFFA members and City officials review alternatives including the GHI carrier. If, within a reasonable time, the parties do not agree on a carrier, the City is authorized to make its selection, including self-funding. The existing level of benefits, however, may not be reduced except by agreement.

As for salary increases, the City argued vigorously the City's inability to pay and also that parity between police and firemen salaries should not be disturbed. The last salary adjustment involving parity took place in 1975 when the PBA was granted an increase of approximately \$250 greater than the PFFA to make up for a differential created by a reduction in fire fighters' hours of work without a reduction in pay and by improvement in the fire fighters' retirement allowances, neither of which was negotiated.

The panel is not unmindful of the concept of parity as a stabilizer of public employee wage schedules. However, there appear to be circumstances in this arbitration which justify departing from the principle of parity. In December 1982, prior to the termination date of the existing agreement, the PBA concluded an agreement with the City providing for a 6% wage increase and a reduction in health insurance benefits amounting to \$362 per covered employee. The panel is not aware of all the factors which fostered the PBA settlement, nor the CSEA settlement at a later date along the same lines. Tested against the criteria set forth in the Section 209(4) of the Public Employees Fair Employment Act, particularly those criteria related to comparability, the PBA settlement is substantially below averages throughout the state. It is not reasonable that the principle of parity should bind the PFFA to a blind acceptance of a below average settlement by the PBA. Negotiated as well as arbitrated settlements in police and firemen negotiations for 1982 and 1983 have averaged from seven plus per cent to eight plus per cent. The few negotiated settlements in 1983 thus far have averaged 7 per cent. (PERB Annual News Letter July 1983

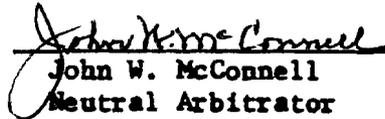
cf. April Vol. 14 No. 1.
 PERB Bulletins for 1983) Recent fire fighter increases in the adjacent cities of Corning and Binghamton have been around the 8 per cent figure for 1983. In its presentation, the City stresses salary comparisons with seven other cities showing that Elmira PFFA salaries are on the low side as starting salary but next to highest after 20 years. In this comparison, however, it must be noted that all the cities used had significantly smaller populations than Elmira except Ithaca and Jamestown. Ithaca had a higher starting salary and a higher after 20 salary than Elmira. Jamestown was higher at the start but lower after 20 years. The PFFA comparisons of salaries for Class I Fire Fighter using 22 cities with varying populations, some larger some smaller, show Elmira fire fighter salaries for contract years 1981 to 1983 to be on the low side. (Un. Ex. #8 pp. 12, 13) The evidence suggests that Elmira fire fighter salaries are somewhat below average when compared to salaries paid by cities close at hand or of comparable size in the upstate area. A salary increase about the average increase in other communities would be fully justified by these comparisons.

By careful and astute management the City of Elmira is in a sound financial position. The City had an unappropriated surplus of \$1,189,973 at the end of 1982. That this sum is used to fund the City's operations through May of the following year to avoid costly borrowing does not diminish the significance of this sum of money. In addition, the City has excess taxing power amounting to \$2,422,059 under present law. In the 1983 budget there is \$350,000 unappropriated reserve. There is no doubt that Elmira exists in declining economic environment. Manufacturing and retail business have left the City and unemployment is extraordinarily high. Nevertheless, the City argument of inability to pay is not persuasive.

The PFFA demand for a 12% increase is obviously far out of line. figured on a basis of an average fire fighter salary of \$18,300 a 12% increase would mean an additional \$2,196 per fire fighter, or a total cost of \$217,000

to the City. The City offer of 6% (without counting the pay back of \$362 per fire fighter for health insurance) amounts to \$110 per fire fighter, or a cost to the City of \$108,900. It is the opinion of the majority of the panel that the application of the criteria set forth in Section 209(4), and recognition of the City's financial position would support a salary increase of 7%, or \$1280 per fire fighter. Fire fighter average salaries would still be about \$100 below the average policeman salary. A 7% increase would mean a total increased cost to the City of \$126,720 in direct wage cost. Of course, application of this increase to fringe benefits would increase the total costs. The difference of approximately \$18,000 in what the City was willing to spend and what this award would cost directly is not overwhelming and appears to be fully justified by the normal criteria applied to police and fire fighter salary adjustments.

Award attached.



John W. McConnell
Neutral Arbitrator

September 8, 1983

In the matter of
the Compulsory Arbitration
between

The City of Elmira, N.Y.

and

Elmira Professional Fire Fighters
Association Local 709

X
X
X
X
X
X
X
X
X
X
X
X
X
X
X

Case # PERB 1A-82-45

The Compulsory Arbitration Panel consisting of
Carl T. Hayden, PFFA member; Cyril Kuttenkuler; City member and
John W. McConnell having met together on August 24, 1983 and
considered all the evidence and arguments presented by the parties
awards as follows:

1. Insurance- The formation of a joint committee for the purpose of
analyzing the health insurance program of the City of Elmira.
The Committee shall consist of three (3) members selected by the
City Manager and three(3) members selected by the EPPFA. It
shall endeavor to agree prior to November 15, 1983 on a program
of insurance through a commercial carrier or a plan of self-
funded insurance which will:
 - a. continue existing coverages of EPPFA members:
 - b. be fully paid by the City of Elmira without any
premium contribution by EPPFA members.

In the event that no plan is agreed upon by the City and EPPFA
representative prior to November 15, 1983, the City may unilat-
erally change insurance carriers or elect to self-fund health
insurance, but the coverage provided must be equal to or better
than existing coverages and may not require any premium
contribution by members of the EPPFA. The EPPFA retains the
right to arbitrate any issue respecting equality of coverage.
The arbitration will be conducted through the auspices of the
American Arbitration Association and shall be binding.

concur: John W. McConnell
John W. McConnell

concur: C. Kuttenkuler
C. Kuttenkuler

concur: Carl T. Hayden
Carl T. Hayden

- 1A. Present insurance coverages are continued during the term of
this award in the manner set forth in the predecessor
collective bargaining agreement.

concur: Carl T. Hayden
Carl T. Hayden

2.

concur: John W. McConnell
John W. McConnell
dissent: C.J. Kuttenkuler
C.J. Kuttenkuler

2. The Union demand for compensation for out-of-title work payable on the first day of such work is denied.

concur: C.J. Kuttenkuler
C.J. Kuttenkuler

concur: Carl T. Hayden
Carl T. Hayden

concur: John W. McConnell
John W. McConnell

3. The Union demand for an increase from 2 hours to 3 hours emergency time guaranteed is denied, but emergency time earned shall be paid monthly and not later than the second pay period of the month.

concur: Carl T. Hayden
Carl T. Hayden

concur: C.J. Kuttenkuler
C.J. Kuttenkuler

concur: John W. McConnell
John W. McConnell

4. The Union demand for for an additional 5 year longevity increment is denied.

concur: C.J. Kuttenkuler
C.J. Kuttenkuler

concur: John W. McConnell
John W. McConnell

concur: Carl T. Hayden
Carl T. Hayden

5. Fire Fighters pay shall be increased 7 per cent effective January 1, 1983.

concur: Carl T. Hayden
Carl T. Hayden

dissent: C.J. Kuttenkuler
C.J. Kuttenkuler

concur: John W. McConnell
John W. McConnell

6. The City demand for a change in the Fire Fighter schedule from 10/14 hour, three day cycle to an 8 hour 5 day work week is denied.

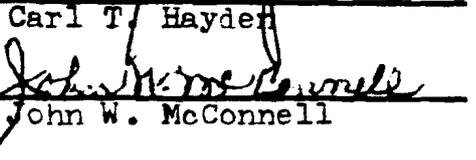
Concur:


C. J. Kuttenkuler

Concur:


Carl T. Hayden

Concur:


John W. McConnell

7. In disposition of all issues submitted to PERB for determination as to their arbitrability, PERB having found them arbitrable (Hearing Officer's Decision and Recommended Order Case # U-6689) this panel awards as follows

As to the parties disagreement in the matter of Grievance and Arbitration Procedure, the majority of the panel finds that the provisions of Article XXXIII of the last agreement of the parties shall be amended to read as follows:

XXXIII. Grievance and Arbitration Procedure

In the event of a dispute between the parties to this Agreement, either party shall have the right to resolve the dispute according to the provisions of the Grievance Procedure, which is Annex D of this document, except that Annex D is superceded on an experimental basis in the following particulars:

1) Paragraphs 5 and 6 of Annex D are suspended for the duration of the term set forth below.

2) Paragraphs 5 and 6 of Annex D are replaced by the following:

"Arbitration.

a. If the employee or the Association is dissatisfied with the Second Stage decision, either may submit the grievance to single person arbitration by filing a demand with the City within fifteen (15) work days from receipt of the Second Stage decision.

RECEIVED AUG 29 1983

b. The employee or the Association shall thereafter file with PERB a request for appointment of an arbitrator in accordance with the rules of PERB.

c. Thereafter the arbitration shall be processed in accordance with the rules and procedures of PERB.

d. The decision of the arbitrator shall be final and binding upon all parties.

e. All costs related to the arbitration process shall be shared equally by the Association and the City."

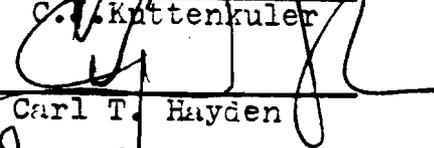
3) This amendment of Article XXXIII is temporary. The single arbitrator procedure is acknowledged by the parties as experimental.

This amendment shall have the same duration as the term of the binding arbitration award unless otherwise extended by the parties or by operation of law. The parties expressly waive the operative effect of the so-called Triborough Doctrine and the provisions of Section 209-a.(1)(e) of the Taylor Law insofar as this particular amendment is concerned.

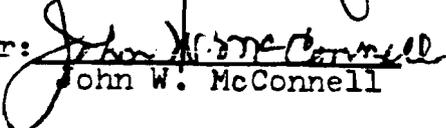
Dissent:


 C. J. Kattenkuler

Concur:


 Carl T. Hayden

Concur:


 John W. McConnell