

PUBLIC EMPLOYMENT RELATIONS BOARD

 In the Matter of the Interest Arbitration
 Between

PERB Case Nos.
 IA88-42;
 M88-478 & 479

CITY OF ALBANY,

Public Employer,

JS CASE NO.
 1447

And

ALBANY PERMANENT PROFESSIONAL FIREFIGHTERS
 ASSOCIATION, LOCALS 2007 and 2007-A

OPINION
 AND
 AWARD

Employee Organizations

 Before the Public Arbitration Panel:

JOHN E. SANDS, Public Member and Chair
 THOMAS F. DE SOY, Employee Organization Member
 VINCENT J. MCARDLE, Public Employer Member

OPINION

This interest arbitration case arises under Section 209.4 of New York State's Civil Service Law. On March 30, 1989 PERB Chairman Harold R. Newman appointed this Public Arbitration Panel to make a just and reasonable determination of the parties' collective bargaining impasse.

Pursuant to our statutory authority, we conducted hearings in Albany, New York on July 13 and 14, 1989. Both sides appeared by counsel and had full opportunity to adduce evidence, to cross-examine each other's witnesses, and to make argument in support of their respective positions. Each submitted lengthy post-hearing briefs, and neither has raised objection to the fairness of this proceeding.

This Panel met in executive session in Albany, New York on September 6th and 25th, 1989.

In arriving at our determination of this dispute, we have considered the entire record before us, including our assessments of witnesses' demeanor and credibility as well as the probative value of evidence. We have reviewed all of the parties' evidence and arguments, taking into consideration Section 209.4's express criteria:

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.

At issue in this dispute are the terms and conditions of employment for Albany's firefighters in Local 2007 and 2007-A's bargaining units for the period beginning January 1, 1989. Because the Taylor Law empowers this Public Arbitration Panel to impose interest arbitration awards for a maximum term of two

years and because we agree that such an award will provide beneficial stability for the parties' relationship, we have determined that the term of the parties' successor contract to that which expired December 31, 1988 should be two years, from January 1, 1989 through December 31, 1990. And we shall so award.

Happily, this case involves no significant dispute concerning the City's ability-to-pay. By dint of skillful and responsible administration, the City of Albany has recovered from a 1982 negative General Fund balance of \$(127,480) to a positive General Fund balance exceeding \$30 million at the end of fiscal year 1988. In addition, 1989 State pension legislation has substantially reduced the City's contribution rates and has freed for other uses a \$6.1 million budget account (A637) that had been reserved for retirement system liabilities that are no longer due.

As a result, the City does not claim inability-to-pay under applicable Taylor Law standards. It does assert unwillingness-to-pay due to competing financial needs for capital projects of pressing importance.

The Union, on the other hand, has presented persuasive evidence that its wage and benefit levels have lagged behind those of firefighters, lieutenants, captains, and battalion chiefs in upstate cities with similar fire service profiles.

Although this Panel remains divided on just what upstate cities provide appropriate comparable data, we are agreed that, on balance, Albany's firefighters deserve to gain some ground in terms of annual salary rates. Total costs, however, should be limited to enable the City to plan effectively to fund its obligation to pay these new rates plus negotiated increases beginning January 1, 1991.

We have therefore determined to grant staggered salary increases during the term of the parties' successor contract that cost six (6%) percent per year but yield annual salary rate increases of eight (8%) percent. We shall therefore award four (4%) percent salary increases on each of these effective dates: January 1, 1989; July 1, 1989; January 1, 1990, and July 1, 1990.

In addition, the parties' recent contracts have provided for salary increases without setting forth a full schedule of salary and longevity entitlements for all bargaining unit members. We agree that the new contract should contain such a comprehensive schedule, and we will so award.

In their prior contract the parties had agreed to provide Section 384-d pension coverage for unit members who so elected. Covered firefighters defrayed the cost of that benefit by accepting annual salary reductions authorized by Section 29.3 of the parties' contract that decreased from five (5%) percent to zero over a period of up to five years depending on seniority.

At the time of that contract's negotiation, those salary reductions comprised about twenty-two (22%) percent of the City's cost for Section 384-d contributions.

Since that time, however, State bills for Section 384-d coverage have declined dramatically. As a result, for less senior firefighters, first year reductions can amount to more than fifty (50%) percent of the City's cost of providing this coverage. That represents an unexpected windfall to the City that the lower contribution rates make unnecessary. In fairness, Section 29.3's salary reduction program should be eliminated from the parties' successor agreement; and we shall so award.

The parties' contract contains a number of anachronistic gender-specific references that ignore the appropriate role of qualified women in firefighting service. Section 8.3.6, for example, contains numerous and unnecessary uses of the words, "man" and "men," that can be easily amended to substitute gender-neutral terms such as "employee," "firefighter," or "person." Indeed, even "manpower" and "manning" can be neutrally expressed by "personnel" or "staffing."

We, therefore unanimously agree that the parties' successor agreement should be amended to eliminate gender-specific terminology, and we shall so award.

Section 12.9 of the parties' contract enables employees to "bank up to one hundred ninety-two (192) work hours per career if he works his vacation." That "bank" provides a valuable dollar payment at current compensation rates upon a firefighter's separation from service for any reason.

Upon the entire record before us we are satisfied that a modest increase of the vacation bank's cap is appropriate. We shall therefore award that the parties' successor agreement provide a vacation bank cap of 240 hours.

The City's management is properly concerned to avoid abuse of personal sick leave entitlement by all City personnel. The union acknowledges the appropriateness of that concern but denies that firefighters as a unit have abused their entitlements.

Rather than limit personal sick leave use as the City has proposed, we have determined that an incentive system applicable to the entire bargaining unit will effectively accomplish the City's purpose without penalizing responsible users of personal sick leave and without affecting the unrelated subject of Section 207-a on-the-job injuries or illnesses.

The incentive's device will be a Personal Sick Leave Bank of 1100 twenty-four-hour days that the City will establish for the entire unit at the start of each calendar year. Over the course of the year that balance will be drawn down on an hourly basis by individual personal sick leave use, not to include catastrophic individual cases of greater than five (5) days' duration. At the end of each calendar year, the bank's remaining hours shall be divided equally among the entire unit on a per-person basis and credited to each individual employee's vacation buy-back bank, without regard to its 240-hour cap.

We believe this provision will serve both parties' interests, and we shall so award.

The City's Emergency Medical Technician and Paramedic programs have added a valuable dimension to the protections afforded Albany's citizens' health and safety. Achieving both certifications requires study and mastery of voluminous written materials and critical care skills. All acknowledge the unique importance of these services, and we agree that the applicable compensation differentials should be increased to reflect that value. We shall therefore award that the differential payments shall be increased for EMT-certified employees from \$400 to \$600 and for paramedics from \$1,250 to \$1,500.

Local 2007's president has received union leave of eight days per year for activities in which the parties share a substantial mutual interest, such as grievance handling that prevents small problems from becoming big ones. In view of the increasing complexity of the legal and practical context in which that job must be done, we have determined to increase union leave for Local 2007's president from eight to ten days per year; and we shall so award.

As to all remaining demands of the parties, there is insufficient evidence in the record before us to justify any change. And we shall so award.

By reason of the foregoing, we issue the following

AWARD

1. TERM. The term of the parties' successor agreement to that which expired December 31, 1988 shall be two years, from January 1, 1989 to December 31, 1990.

2. VACATION BANK CAP. The parties' successor agreement shall provide a vacation bank cap of 240 hours.

3. PERSONAL SICK LEAVE. To act as a group incentive to encourage responsible use of personal sick leave, the parties' successor agreement shall, effective January 1, 1990, provide that the City establish a Personal Sick Leave Bank of 1100 twenty-four hour days at the start of each calendar year, to be drawn down on an hourly basis by individual personal sick leave use, not to include catastrophic individual cases of greater than five days' duration. At the end of each calendar year, the bank's remaining hours shall be divided equally among the entire bargaining unit on a per-person basis and credited to each individual employee's vacation buy-back bank, without regard to the vacation bank's 240-hour cap. This provision is not intended to affect treatment of Section 207-a on-the-job injuries or illnesses.

4. SALARIES.

(a) During the term of the parties' successor agreement, salaries shall be increased as follows:

Effective January 1, 1989	-	4%
Effective July 1, 1989	-	4%
Effective January 1, 1990	-	4%
Effective July 1, 1990	-	4%

(b) The salary schedule applicable to bargaining unit members shall appear in the parties' successor agreement in the following form:

SALARY	1/1/89	7/1/89	1/1/90	7/1/90
BATT CHIEF	38,060	39,582	41,166	42,812
CAPT	34,259	35,629	37,054	38,536
LT	32,525	33,826	35,179	36,586
TOP FF	28,910	30,066	31,269	32,520
4	27,464	28,563	29,705	30,894
3	26,019	27,059	28,142	29,268
2	24,573	25,556	26,578	27,641
1	23,126	24,052	25,014	26,014

(c) Effective January 1, 1990, salary rates shall apply regardless of employees' election of Section 384-d coverage by deleting Section 29.3 from the parties' successor agreement on that date, and Section 28.3 from the Battalion Chief's Agreement.

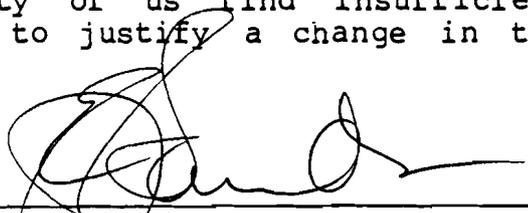
5. GENDER NEUTRALITY. The parties' successor agreement shall be amended to eliminate gender-specific terminology.

6. UNION LEAVE. The parties' successor agreement shall be amended to increase union leave for Local 2007's president from eight to ten days per year.

7. EMT AND PARAMEDIC DIFFERENTIALS. The parties' successor agreement shall be amended to increase differential payments for EMT-certified employees from \$400 to \$600 and for paramedics from \$1,250 to \$1,500.

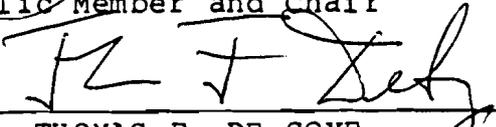
8. RESIDUAL MATTERS. As to each and every remaining demand of the parties, a majority of us find insufficient evidence in the record before us to justify a change in the status quo.

Dated: October 18, 1989
South Orange, New Jersey



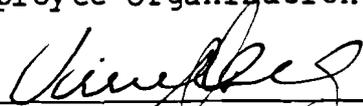
JOHN E. SANDS
Public Member and Chair

Dated: October 20, 1989
White Plains, New York



THOMAS F. DE SOYE
Employee Organization Member

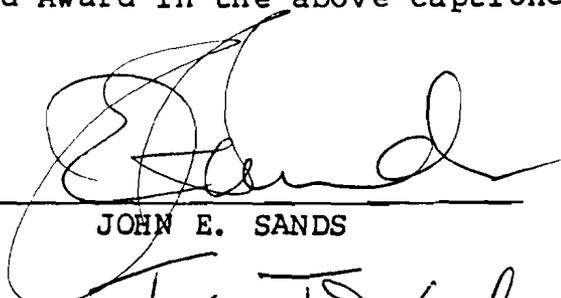
Dated: October 20, 1989
Albany, New York



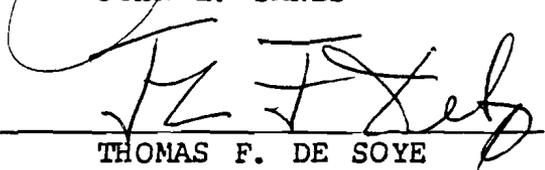
VINCENT J. MC ARDLE, JR.
Public Employer Member
Dissenting in Park (See Attached)

AFFIRMATIONS

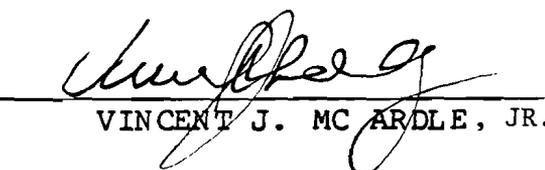
Pursuant to Article 75 of the Civil Practice Law and Rules of New York State, we affirm that we have executed the foregoing as and for our Opinion and Award in the above-captioned matter.



JOHN E. SANDS



THOMAS F. DE SOYE



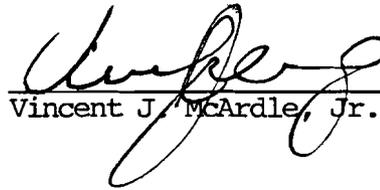
VINCENT J. MC ARDLE, JR.

DISSENT

The undersigned is in basic agreement with the award herein and the supporting rationales. I must dissent, however, on the issue of salary increases. While the City agrees that a 6% pay increase is within reasonable bounds of each of the contract years, the 4-4-4-4 award goes much farther. By raising the base by more than 8% at the end of each contract year, it not only has the immediate effect of raising salary by 8% in the second year over the 6% in pocket in the first year, but raises the salary base by 17% entering the next round of negotiations.

The argument presented by the majority that this is a catch-up to equate Albany firefighters with those "in upstate cities with similar fire service profiles" fails on two accounts. First, the comparison is valid only if Albany is equated solely with cities with much larger populations, (Buffalo, Syracuse, Rochester and Yonkers) and second, any comparable averages using even these larger cities is skewed by the inclusion of Yonkers. A city which shares a geographical border with New York City can in no way be considered as upstate. And the labor contracts with which Yonkers is burdened are at least in part the cause of that city's recent financial ills. To compare Albany to Yonkers does the taxpayers of this city no favor.

If Yonkers were removed from the comparison a 6% increase per year would be more than competitive. Also, if any of the upstate cities whose populations more closely mirror ours (eg. Utica, Binghamton, Niagara Falls) were included, even 6% per year would put us at the head of the table.



Vincent J. McArdle, Jr.