

NEW YORK STATE PUBLIC EMPLOYMENT
RELATIONS BOARD (PERB)
COMPULSORY INTEREST ARBITRATION

THE CITY OF SYRACUSE (City, :
Employer) : OPINION
and :
: and
SYRACUSE AIRPORT PROFESSIONAL :
FIRE FIGHTERS ASSOCIATION (Union, : AWARD
Employees, Crash Rescue Firefighters) : PERB A92-008
M91-501

Eric W. Lawson, Jr. Esq. Chairman, Tripartite Panel
M. Renee Baker, City Representative
Donald Killian, Union Representative

NYSPERB PUBLIC EMPLOYMENT RELATIONS BOARD
RECEIVED
MAY 24 1993
CONCILIATION

APPEARANCES:

For the City, by, James Jarvis, Assistant Corporation Counsel

Assisting, Kenneth Mokrzycki, Budget Director
Marguerite A. Conan, Assistant Corporation
Counsel
Stephen Jaremko, Personnel Analyst

**For the Crash Rescue Firefighters, by Charles Blitman, Blitman and King At-
torneys**

Assisting, James Colliton, Esq.
Douglas Graham, Vice President
Richard Hirsh, Member negotiating Committee
James Ennis, President

PROCEDURE:

The parties, bound by a collective bargaining agreement (cba) which expired on December 31, 1990, entered into negotiations for a successor agreement. Those negotiations failed to produce complete agreement and an impasse was declared and mediation undertaken. On June 30, 1992, mediation having not produced agreement on all of the open items, the Union filed a petition for compulsory interest arbitration with PERB {amended by operation of a August 20, 1992 letter}. Thereafter, on September 10, 1992 PERB designated an interest arbitration panel naming James Ennis and Renee Baker as the advocate members and Eric Lawson Jr. as the impartial chairman. Subsequently, without objection from the City, Ennis was replaced by Killian as the Union representative.

On February 18, 1993 the parties presented oral argument and documentation to the tri-partite panel at a hearing held in Syracuse New York. Subsequently, briefs and a closing letter were received by March 23, 1993 at which time the record was closed. The award which follows was prepared by the Chairman of the panel. A meeting between the panel took place in Syracuse on May 4, 1993 where the award was reviewed.

STIPULATIONS:

The City's panelist, Renee Baker, left prior to the conclusion of the oral hearing. However, both parties stated that they were agreeable to her leaving and stipulated that no objection would be made because of her absence from a portion of the hearing.

Matters pending in an improper practice charge do not affect this proceeding.

STATUTORY MANDATES:

The standards to be employed by the tri-partite, public arbitration panel, which must achieve a majority vote upon all items submitted to it for determination, are found at Article XIV (CSL), Section 209 4, and are:

v. the public arbitration panel shall make a just and reasonable determination of 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 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.

...

MATTERS SUBMITTED FOR INTEREST ARBITRATION:

Salaries
Longevity
Vacation
Staffing
Sick Leave Buy-back
Retroactivity
Confidentiality
Sick Leave
Discharge and Discipline

OVERVIEW:

The bargaining unit (Crash Rescue Firefighters) contains 25 employees, 20 of whom are airport rescue firefighters and 5 of whom are either assistant chiefs or first assistant chiefs. The bargaining unit is headquartered at Hancock Airport, the regional airport owned by the City of Syracuse. The unit provides crash and fire rescue services 24 hours a day, seven days a week at the airport. The unit also responds to fires in airport structures prior to the time when regular fire fighting crews from the City of Syracuse arrive. The unit also monitors and reports on runway conditions, supplies emergency medical assistance to persons at the airport, performs training exercises for airport and airline employees and makes safety inspections of airport buildings.

The bargaining unit was formed in 1969. This is the first time an impasse progressed to the interest arbitration stage. Arbitration has not been available to the Crash Rescue Firefighters until this impasse.

POSITIONS OF THE PARTIES:

Union:

The Union contends that Hancock Airport which, although it is owned by the City, operates as an independent, profit producing entity, has generated surplus cash flow capable of meeting the various economic demands sought by the Crash Rescue Firefighters. Since the airport is financially independent from the City of Syracuse, its budget is funded directly from airport operations which include landing fees, rental income and fees paid by concessionaires. Net operating income of \$1,362,610 was reported for 1991 an increase of approximately \$400,000 from 1990 (Table X). The airport budget for 1993 is 5.8% larger than that for 1991. At a cost of 35 million dollars, the airport recently underwent a terminal expansion project which roughly doubled the capacity of the former terminal. An ambitious five year capital im-

provement program has been adopted (Table VI). Leases for new tenants and a diversified roster of airlines which utilize the airport assure the continued enhancement of the revenue base of the airport.

The Crash Rescue Firefighter bargaining unit at the airport is distinct, separate and independent from the bargaining unit for City of Syracuse firefighters. The airport unit has duties which reflect the mission of the unit, a mission which is different from that of the City of Syracuse fire fighting unit and which emphasizes airport crash and rescue operations as well as fire fighting duties. (See Tables VII and VIII for a comparison of City and Airport Firefighter duties and standards).

In a 1983 decision which was upheld by the Court of Appeals in 1986, PERB held that airport firefighters' duties were less extensive than those of the city wide unit and therefore held that they did not meet the criteria of being an "organized fire department" required for them to fall beneath the compulsory arbitration provisions of the New York Taylor Law. (See footnote 5, Union Brief [UB], p. 8) However, an amendment to the Taylor law in 1988 defined the Airport Crash Rescue Firefighters as an, "organized fire department," thereby placing them within the compulsory binding arbitration parameters of the law. The Union concludes from this legislation that the best comparison of salaries and benefits is between the Crash Rescue Firefighters and the City firefighters since the legislative exception allowing the Crash Rescue Firefighters to arbitrate their contract disputes was created because the City of Syracuse employs the Crash Rescue Firefighters even though they are paid from the airport budget.

The Crash Rescue Firefighters seek salaries and benefits comparable to those received by their brethren in the City of Syracuse fire fighting unit. That unit received an interest arbitration award from John Sands, covering 1991 and 1992, which provided for 4% salary increases for each year. The increases were not to be paid however, until the end of the 1992 contract year. Upon an application to confirm, the Sands award was vacated, the court finding inconsistent Sand's conclusion that there was an inability to pay while at the same time awarding salary increases. In subsequent negotiations, the parties voluntarily agreed to implement the Sand's decision, which also provided for a minimum staffing compliment and, in addition, the parties agreed to add a section 384(e) retirement benefit and a 2% salary increase to become effective on July 1, 1993. The valuation of the retirement benefit is estimated to be between 3.5 and 4%

The Union observes that Syracuse and its metropolitan environs have enjoyed economic growth superior to that throughout the State and superior to that in the upstate region. The city presently has a AA rating in the bond markets. Several years ago the rating was AAA.

Comparisons with public employees, other than firefighters, are inapposite since they are not at the level of risk of the Crash Rescue Firefighters and because Crash

Rescue Firefighters' training and service requirements and their impact on the health and safety of residents of the community they serve are greater than other public employees. Relevant statistics establish that firefighters' line-of-duty injuries affect one third of all firefighters annually, a rate over four times higher than the injury rate suffered in private sector employment (CO). Complimentary studies show that the exposure rate of firefighters to disease, heat, excessive noise, stress, toxic substances including carbon monoxide are all elevated for firefighters. These risks are compounded by firefighters working in airport crash rescue units where the exposure to highly toxic substances and other hazards unique to aircraft and airports makes their employment environment particularly onerous.

As can be seen, the working conditions of Crash Rescue Firefighters are distinctly different from those of other employees, public and private, blue and white collar. While there may be incidents of work performed by firefighters which match those of other occupations, when taken together, the working conditions for firefighters are sui generis. (Citation Omitted [CO])

The Crash Rescue Firefighters have had approximately a 10% increase in their work load from 1991 to 1992 (Table V). Their work has been the subject of several commendations. The bargaining unit size has fluctuated over the period of 1991 to 1993, ranging in size from 20 to 24 members (Table I).

The recently completed expansion of the terminal and plans for an ambitious capital investment program in the airport assure that the Crash Rescue Firefighters shall continue to face a growing and ever more diversified work load (See Table VI). Included in their duties is the obligation of members of the bargaining unit to inspect and assure the safety of a large fuel farm and related appurtenances located at the airport.

The diversity of the work of the Crash Rescue Firefighters' unit is greater than the work performed by City of Syracuse firefighters (See Firefighter Brief [FB], PP 30, 31, 32). Table VII establishes that although bargaining unit members perform 9 of the 11 duties performed by City of Syracuse firefighters, they also perform eight additional duties and the assistant chiefs in the unit perform 14 duties not performed by City firefighters. In addition to duties directly related to fire fighting and crash rescue work, Crash Rescue Firefighters must also report on runway conditions several times each day, requiring that the entire airport be monitored. Ennis testified to an incident in which Crash Rescue Firefighters responded far more quickly to a call regarding an Air National Guard plane, than the Guard firefighting contingent itself.

Related to their additional duties is the obligation of Crash Rescue Firefighters to develop expertise in areas which exceed the competency expectations of City firefighters (See Table VIII). Department of Labor statistics establish that the physical

pre-requisites for work as a firefighter are greater than those of any other occupation. Educational qualifications, including a Civil Service examination and training received on the job, are stringent for all firefighters but even more so for those working in airport crash and rescue units (Table XII, XIII, XIV, XV).

City of Syracuse police are assigned to the airport on a rotating basis. Since they are all in the same bargaining unit, there is no distinction between the salaries and fringe benefits paid police working at the airport and those working elsewhere. Moreover, until an appeal was taken regarding the application of the Sand's arbitration award, as it applies to the police, parity in wages prevailed between police and firefighters in Syracuse. The same parity should be achieved between the Crash Rescue Firefighters and firefighters in the City of Syracuse fire fighting force.

In evaluating the ability of the public employer to pay, the law requires that a balance be achieved with the "interests and welfare of the public." With regard to the essential service of public safety performed by the Crash Rescue Firefighters, the City's ability to fund appropriate salary increases may require that an adjustment of priorities be made by the employer (CO). The fact that the Enterprise Fund, from which the costs of maintaining the unit are paid, is a fully self-supporting fund, make the fiscal condition of the City of Syracuse an irrelevant consideration. That fund has experienced an increase in operating revenue between 1990 and 1991, of 45% or \$422,000 (Table X). The favorable economic condition attained by the Enterprise Fund in 1991, over 1990 is further illustrated by the fact that the fund turned a net loss of \$163,000 into net income of \$534,600. An increase in Fund equity of 31% occurred between 1991 and 1992 (Table XI).

Since the airport is legally obligated to spend revenues generated by its operations for capital improvements and operating costs, its retained earnings in excess of 4 million dollars are more than adequate to fund the salary and benefit costs sought by the Crash Rescue Firefighters. While an ability to pay argument was considered by the arbitrator hearing the City firefighter impasse, the difference in the funding source there, compared to the separate and distinct funding source available for funding the Firefighter's demands here clearly establishes the Employer's ability to pay.

Salaries:

The Crash Rescue Firefighters, whose salary range as of January 1, 1990 was from \$20,482 to \$26,734, in five steps, compare unfavorably with firefighters in the City of Syracuse bargaining unit. Syracuse firefighter's salaries range from \$28,322 to \$34,380¹. The top step Firefighter salary of \$26, 734 is compared with the top step

¹ City firefighter's salaries reflect an 8% delayed increase for 1991 and 1992, paid in the last day of 1992 and an additional 2% to become effective on July 1, 1993

salary of \$35,068 which is to be paid City firefighters, as of July 1993, reflecting the 9%² negotiated salary settlement with the City of Syracuse (Table III). The discrepancy on the base salary will be 31.2%.

By way of illustrating the loss they suffered during years when they were unable to arbitrate their contracts, the Union offers Table IV. That data show the aggregated annual difference between salaries paid top step Crash Rescue Firefighters and top step City firefighters for the 21 year period between 1969 and 1990. The difference is over \$83,000.

To achieve parity with salaries paid City firefighters, which is the Union demand, the Union seeks a two year contract with salary increases the first year (1991) at a cost of \$142,667 and second year (1992) increases costing \$158,292. The salary levels which would be attained if the wage demand of the Union were awarded, would nevertheless remain behind salaries paid firefighters in cities with populations between 125,000 and 1 million including Yonkers, Rochester and Buffalo, as well as the City of Syracuse itself. The lag would range from 26% to 57% (Table XVIII).

Staffing:

Presently maximum staffing per shift is six and minimum staffing is four, numbers which obviously control the size of a crew responding to an emergency at the airport. Compared with the size of City fire fighter response teams responding to even minor emergencies, the airport staffing level is inadequate. Because of this inadequacy the public is placed at risk (See FFB, p. 82).

The Union proposes that where staffing falls beneath five persons per shift, those working the shift shall be paid a premium of 10% of their straight time rate for all hours worked where the crew size is fewer than five fire fighters.

Longevity:

The Union proposes replacing the present longevity provision, which provides for \$200 cumulative wage increases after ten, fifteen and twenty years of service, with a provision which pays 2, 3, 4, and 5% of the employee's base salary as a longevity adjustment after ten, fifteen, twenty and twenty five years of service. (\$408, \$612, \$816 and \$1020 on the current base salary) As illustrated by Table XIX, longevity increases in Rochester, Yonkers, Buffalo and Syracuse average \$559, \$1,031 and \$1,503 for ten, fifteen and twenty years of service.

The existing discrepancy in longevity payments is heightened at higher levels of se-

2A 2% wage increase is provided in 1993 however, since it become effective half way through the year, only 1% is added to the net increase.

niority. Given differences earlier documented in the demands of their jobs as fire fighters at the airport and because of cost of living considerations, the Firefighter's demand should be granted. The fact that members of the bargaining unit might look forward to career adjustments at five year intervals, after their initial annual progressions have ended, would both provide an incentive to make a career out of the job as an airport firefighter and would also recognize the experience more senior bargaining unit members have.

Vacation:

For the same reasons offered in support of their demand for a salary upgrade, the Union seeks the same vacation as that paid City of Syracuse firefighters. Presently Crash Rescue Firefighters receive the following approximate number of days off (The actual days available in the "one week" are calculated on a rounded off basis depending on seniority, so that employees approaching the next vacation level will have the full week available):

- Up to six months - one week
- Six months to one year - 40 hours plus one week
- One year or more - 80 hours plus one week
- Five years or more - 120 hours plus one week
- Fifteen years or more - 160 hours plus one week

The proposal would provide (The time in parenthesis is the maximum time available with the greatest seniority at that level and assumes a week to be worth 40 hours):

- Up to one year, 12 hours per month (3.6 weeks)
- One year or more, (3.30 weeks)
- Between four and five years (4.30 weeks)
- Five years or more (4.50 weeks)
- Between 14 years and 15 years (5.50 weeks)
- More than 15 years (9.10 weeks)

The Union observes that presently Crash Rescue Firefighters have a shortfall of between 22% to 40% fewer vacation hours available than City firefighters (Table XX)

Sick Leave Accumulation Sell Back:

Presently employees may accumulate up to a maximum of 150 sick leave days. The Union proposes to allow employees to sell their sick leave days back to the City at their per diem value, once a year, without regard to the total days accumulated and to, in addition, require that upon leaving service, the City pay for all unused sick leave days standing to the credit of the firefighter. For the reasons set forth elsewhere - where the Crash Rescue Firefighters seek parity with City bargaining units including firefighters - so too here do they seek parity on the issue of sick leave ac-

cumulation sell back³.

Retroactivity:

The Union proposes full retroactivity (to January 1, 1991) and state:

As discussed above in the subsection entitled "The Tremendous Difference Between This Bargaining Unit And ALL of the City's Other Bargaining Units," many of the City's other bargaining units experienced salary freezes in 1991 and 1992 SOLELY because of the City's contention that it did not have any ability whatsoever to finance ANY salary or benefit increases.

The Union argues that since the funding source at the airport is separate from that available in the City, ability to pay becomes relatively unimportant. Moreover, the Union argues that the CPI increased by 2.9% in 1991 and continued to increase at that rate for 1993 as well. They conclude that a 6% erosion of salaries has occurred during the period since the contract being renegotiated expired and that an award of that magnitude is required to simply stay equal with inflation.

Confidentiality:

The Union seeks to continue a prohibition preventing either party to the cba from utilizing proposals made in the course of bargaining in arbitrations regarding the interpretation of the cba. The Union states that such a prohibition promotes a freer exchange of proposals.

Union Reply to City Brief:

The Union's demands constitute a minuscule portion of the Enterprise Fund, a figure approximately twice that of the cost of a recent crash and rescue vehicle purchased by the City for the airport.

The City's efforts to entangle the Enterprise fund, which pays the airport's operating costs including the salaries and benefits of its firefighters, with the City's general fund, is disingenuous. The two are entirely separate. The Enterprise Fund unlike, perhaps, the City's General Fund, is easily capable of paying the demands of the Firefighter's unit and, in addition, the Fund has already budgeted and set aside funds which could be used for this purpose.

The City's reliance on comparison with other City employees is not sanctioned by the Taylor Law and should, therefore, be disregarded.

³City firefighters do not presently have a buy-back provision.

The City's citation to the cost of the airport expansion, including the cost of debt service, is irrelevant to the matters pending here. That cost was not reflected in the budgets for the years under considered here. What is relevant is that the Enterprise fund, in spite of the City's contention that passenger traffic has declined, has continued to grow at a significant rate, a result of growing revenues from other sources. Further proof of growth at the airport is the fact that the number of employees working at the airport increased by 48% between 1990 and 1992.

Comparables cited by the City should be disregarded. The most appropriate comparison is with the City's other firefighters, not with employees working at airports bearing a different FAA classification or with private sector employees working at the Albany County airport. Even more pertinent is the failure of the City to show that it has applied statutory criteria regarding the conditions of employment of other airport fire fighters which is needed for establishing relevant comparisons. Nor has the City shown that the cities which it cited fund their airport operations in the manner used at Hancock Airport.

In making comparisons with City firefighters, the Panel should ignore calculations as to the number of responses per City unit. Those responses fail to describe the nature of the call or the extent of the service provided. Nor do the figures attempt to reconcile the number of responses with the number of hours worked.

If other airport firefighters are to be used as a basis, the criteria suggest that they should be firefighters employed by the Cities of Yonkers, Buffalo and Rochester. Where those cities employ airport firefighters, or where other municipal entities in those cities employ airport firefighters and they are not subject to binding arbitration, they should not be compared with the Crash Rescue Firefighters here. Similarly, any comparison of wages and benefits with other employees not covered by binding arbitration should also be disregarded.

Binding arbitration requires that specified criteria be utilized in determining what wage and benefit levels should be. The desire of the employer to pay or not pay is, therefore, not a relevant criteria for employees subject to interest arbitration. For all other employees however, that desire may be a factor in their success at the bargaining table and for this reason their terms and conditions of employment should not serve as a basis of comparison with employees allowed to bargaining the terms and conditions of their employment.

The City has failed to show abuses in the present system of accounting for sick leave taken by bargaining unit members nor has it shown that vacation scheduling has created a problem during the 20 year period that the present system has been in effect. Problems the City claims they have with discipline and discharge have not been documented and therefore there is no reason for altering the status quo. With regard to its health and dental demands, the City's position is inherently illogical and, if adopted, would work a cruel consequence on Crash Rescue Firefighters who are

asked to take no salary increase for two years but to at the same time absorb more of the costs of their health insurance. The fact that current practice in the unit, with regard to health insurance premiums, is similar to or identical with other City bargaining units, is another cogent reason why the proposal should be denied.

The City's estimate of the total wage and benefit cost of members of the unit is overstated because most overtime has been eliminated, the projected cost of longevity payments assumes that everyone is eligible to receive longevity, there are relatively few members who have received the sick leave incentive benefit and estimated retirement payment costs are inflated.

Finally, in response to a question asked by the Chairman at the conclusion of the arbitration hearing, as to whether the Union's advocate was aware of any increase in benefits of the magnitude sought here ever being awarded in an interest arbitration, to which he answered "no," several points are made. This is the first interest arbitration ever undertaken by this unit. Had it been afforded the right to arbitrate in previous years, the disparity in wages would be far smaller, if they existed at all and the demands would therefore be much more modest. In another interest arbitration in Buffalo, an award was rendered which far exceeded awards in other jurisdictions when it was determined that special circumstances prevailed. So to here do those circumstances compel an award of an unusually large magnitude.

City:

Because of fiscal exigencies, the City proposes a wage freeze for all of its employees including the Crash Rescue Firefighters. The freeze for the Crash Rescue Firefighters is to commence on January 1, 1991.

The Enterprise Fund, created in 1990 to fund airport operations, like other discrete funds established by the City for funding specific projects or operations, is linked to the overall financial status of the City (See Revenue Analysis, City Brief [CB] p. 9) The fiscal health of the City, which includes the Enterprise Fund, may be measured by the ratings given it by the rating agencies including Moody's Investor services. In addition, interfund transfers and the obligation of the funds to reimburse the City for services such as police costs creates an interdependency which ties the fiscal well-being of the City to that of the airport. In addition, the City's administrative policies cover all City employees making the distinction between employees whose salaries are supplied from resources in a particular fund indistinguishable from other employees.

Equity dictates that all employees of the City be treated in at least a roughly comparable manner, regardless of the payroll account they have been assigned (CB p 3.4.).

Mokrzycki testified that the City, by raising property taxes 46%, attempted to meet its financial obligations, including raises of 2% to 3% for its employees, in 1991.

However, a decline in anticipated aid from the State of 7.9 million dollars forced the City to implement a hiring freeze and take other steps including benefit roll-backs and staff reductions to meet the aid shortfall. The salary increases which had been previously budgeted for 1991 were sacrificed in order to allow the City to meet its Charter obligation of keeping a balanced budget.

Budgeting for 1992 was difficult because of a loss of sales tax revenue, uncertainty over state aid, limitations on the City's ability to raise local tax revenue and the absence of alternative funding sources. The principal sources of funds available in the 1991 General Fund (sales tax, state aid, property tax and appropriated surplus) which account for 78% of the funds in the account, continued to be weak in 1992. The budgeted amount for the General Fund in 1991 was almost ten million dollars below actual revenue. In 1992 the sales tax collections were off by 4.2%, and further reductions of three million dollars in state aid occurred. A loss of 3.8% and 5% respectively occurred in the local tax assessments in 1991 and 1992 thereby reducing the ability to collect the property tax.

The sources of funds for the balance of the General Fund account (22%), fees for service, payments in lieu of taxes and interests on accounts, possess limited elasticity as sources of new revenue.

The 1992 budget was two million dollars below the 1991 budget and contained no provision for salary increases for City employees.

Consistent with the City Charter, surplus funds, which may be funds generated from operations such as Hancock Airport, must be used to fund operations in the year following the year in which the funds are certified. Surplus funds may be used to fund new operations, including salary increases but only where the cost of those operations are above the level funded the previous year even where there has been a surplus in each year. Where City wide operations produced a ten million dollars surplus in 1989, certified as such in 1990, that amount became available in 1991. However, since 1990 operations produced a surplus of only 7.8 million dollars, there was actually a shortfall of 2.2 million dollars for 1992. The consequence of the 2.2 million dollars shortfall is that funds were unavailable to fund new operations and "new operations" includes salary increases.

Since 5.75 million dollars of the surplus funds certified in 1990 were used to alleviate the tax increase in 1991, the ability of the City to carry-over surplus funds in the future is compromised. The 1991 surplus available for 1993 was 2.4 million below that of 1990. One explanation for this gradual decline in the fund balance created by surplus revenue is because the City has ceased funding its salary accounts at 100%, a practice which created surplus funds from unoccupied salary items.

Because of the shortfall of revenues, caused to a significant degree by a reduction in the amount of state aid, the City is without the resources to provide salary increases

and is currently without the resources to even maintain existing staffing levels.

Demands on the City for increased spending further erode its ability to address the Union's demands. Waste disposal costs, workers compensation benefits, debt service and health insurance costs are essentially beyond the City's ability to control yet each has increased substantially in cost.

Cut-backs in City expenditures in 1991 and 1992, to meet the revenue shortfall and additional mandated costs, required a hiring freeze, reductions in several capital programs, the elimination of many full and part-time employees and other cuts (See CB pp 20, 21, 26). In two years the City has cut its personnel roster by 20%. No moneys were set aside for salary increases for 1990, 1991 and 1992 or if set aside, those moneys were committed elsewhere and became unavailable for salary increases. Because of these sacrifices, 5% has been set aside in the 1993 budget for employees not covered by the Sand's award

Except for the 6 members of the Fire Deputy Chiefs unit, who are at impasse, the City has met its fiscal emergency by securing wage freezes in 1991 and 1992 from the rest of its bargaining units including police and firefighters who were covered by the Sand's arbitration decision⁴ (They to receive two 4% salary increases prospectively, as of December 31, 1992), {Building trades, AFSCME Local 1773 [with a \$100 signing bonus], AFSCME Local 400 [2.2% increase July 1, 1990], CSEA}.

The forces which placed the City in its current fiscal bind became apparent in 1991. In the intervening years no relief in the City's fiscal plight has been experienced and projections into the future do not hold forth the promise of relief. The City, like other municipalities across the State, is faced with a long term reduction in revenue. Where salary increases are negotiated, payments for those increases must come at the expense of jobs, savings, productivity improvements or the elimination of services.

While it is beyond dispute that salary increases for the Crash Rescue Firefighters flow out of the Enterprise Fund, this fund like others created for special purposes by the City has certain limitations upon the use to which its revenues may be employed. In addition, the health of the Enterprise Fund is directly related to airport activity. Between 1990 and 1992 airport passenger activity has declined by 14%. This decline occurred simultaneously with an ambitious airport terminal expansion project, a project which has burdened airport operations with new debt.

For the reasons detailed above, the statutory mandate regarding the City's ability to

⁴ Presently on remand at the order of State Supreme Court. That decision is on appeal by the City. The City firefighters have negotiated two 4% salary increases effective on January 1, 1993 and a 2% increase effective on July 1, 1993 supra.

pay must be afforded significant consideration in arriving at a salary award. So too should a comparison of wages and benefits paid other airport crash rescue bargaining units be made.

Crash rescue units at Binghamton, Buffalo and Rochester are appropriate for comparison because each is staffed with public sector employees performing services similar to those performed at Syracuse and are either the same designation as Syracuse (Class C) or are one class above or below the Syracuse facility. Albany should also be included on the list, because in spite of the fact that its crash rescue services have been privatized, the services remain identical to or are very similar with those performed by the Crash Rescue Firefighters at Hancock airport. The average of wages paid in Buffalo, Rochester and Binghamton in 1991 for airport firefighters was \$27,756.7. In 1992 that average had risen to \$29,085 ("Salaries" top step, CB p. 34) These figures are to be compared with \$26,734 being paid comparable members of the Syracuse unit and show that contrary to the Union's contention, there is no basis for a catch-up award. This point becomes even more convincing in light of the salaries paid crash and rescue firefighters working at the Albany County Airport. Their firefighter wages were just \$20,010. Finally, generous benefits paid firefighters increase the cost of their services to the City of Syracuse, on average, to \$41,145 at the top step of the salary schedule (See chart, p. 36, CB).

Within the realm of comparability, wages and benefits paid other organized City employees must not be overlooked. As detailed above, those units have had no increases whatsoever in 1991 and 1992. Furthermore, wage increases, as a percentage of base afforded Crash Rescue Firefighters over the last ten years easily surpasses comparable increases for each of the five other principal bargaining units if the two 4% increases for City firefighters effective on January 1, 1993 is disregarded (See Exhibit, p. 38 CB). Not only would an increase for Crash Rescue Firefighters in 1991 and 1992 be unjustified upon the statutory criteria but it would also unbalance and make inequitable the current status of bargaining between the City and its other units.

Sick Leave Authorization:

The City seeks a reduction in the number of sick leave days which may be taken without a medical excuse from the present eight to three days.

Sick Leave Authorization for Absences Occurring the Day Following a Personal Leave Day, Holiday or Vacation Day:

Both sick leave proposals are intended to provide the City with greater control over the utilization of sick leave.

Vacation Requests:

2. A determination as to what factors should be considered in deciding the Employer's ability to pay,
3. The significance to be attached to the status Crash Rescue Firefighters currently occupy by way of their cba.

Few would disagree that the most comparable groups of employees to the Crash Rescue Firefighters, as far as the duties they perform and the conditions of their employment, are other firefighters, particularly where identical services are performed. Unfortunately, no such comparable group was identified by either party.

To the almost total exclusion of any other unit of employees, the Union cites City firefighters as those to which the Crash Rescue Firefighters' terms and conditions of employment should be measured. While both the Crash Rescue Firefighters and City firefighters perform primarily firefighting duties and by this standard are probably more appropriately compared with each other than a comparison with police or non-security employees, the match is nevertheless imperfect.

By the Union's own description, City firefighters perform different services, meet different civil service requirements and respond to calls which may present uniquely different circumstances than are required of or faced by the Crash Rescue Firefighters here. The significance of these differences and the more limited duties performed by airport fire fighting crews lay behind PERB's decision in 1983 to exclude them from the Taylor Law's compulsory binding arbitration requirements. While the law extending arbitration to the Crash Rescue Firefighters rendered moot the refusal of PERB to administratively extend the binding arbitration provisions, that statutory enactment did not also per se, make the two groups any more similar with regard to the duties they perform, to the conditions of their employment, to the hazards of employment, to the physical qualifications of the job, to the educational qualifications, to the mental qualifications or to the job training and skills than existed prior to the legislative enactment.

The Union offered evidence in support of their contention that the range of Firefighter duties, the types of emergencies they may be asked to respond to and other criteria are equal to or greater than similar duties for City firefighters. The fact is however, that City firefighters may be pressed into service in situations which are unlikely to ever be faced by airport firefighters. Accidents involving rail road cars carrying toxic chemicals, factory fires involving the threat of explosion and/or the collapse of large buildings, fires in multi-storied buildings, in fuel and chemical refineries, storage facilities, and at public facilities accomodating large numbers of persons create situations at least as perilous to those responding to the emergency as may be be faced at the airport.

Also of relevance to these comparisons is the fact that City firefighters respond to a significantly larger number of calls than do airport firefighters, even though a por-

tion of these calls may be false alarms, or calls requiring limited service. (No figures were offered to show the number of false alarms, or non-crisis calls received at the airport, See Table V)

Surely comparability exists between Crash Rescue Firefighters and the City firefighting unit, but the comparison is not exclusive.

The City cites firefighting crews employed at airports at Binghamton, Rochester, Buffalo and Albany as appropriately compared to Syracuse. Syracuse and Rochester are both class C airports, Binghamton and Albany, which has privatised its fire crews, are both class B airports. Buffalo, the largest of those compared, is a class D airport. Other class B airports such as Elmira and Niagara Falls were not compared because of substantial differences between their operations and those performed at Syracuse. The Union, which resists comparisons with other airport firefighting units which are not covered by compulsory binding arbitration, states that if comparisons must be made, they should include the Yonkers airport.

Addressing at first, the Union's contention that bargaining units not covered by compulsory arbitration should not be included in the comparison base, the Panel references the statutory criteria at Section 209.4 v. d. ["the terms of [cba] negotiated between the parties in the past"]. None of the agreements negotiated by the Crash Rescue Firefighters to date, like none of the agreements affecting employees working on airport firefighting crews in Buffalo, Rochester, Yonkers or Binghamton, were subject to compulsory, binding arbitration. All, including the cba being renegotiated here, were products of conventional Section 209 bargaining and were not subject compulsory, binding, interest arbitration. Neither were the employment terms of Albany County Airport firefighters set by binding arbitration. They, unlike all of the other public sector comparables, had the right to strike in support of their bargaining position.

The Union presumes that the disparity in salaries between Crash Rescue Firefighters and City firefighters is the consequence of the former being without binding arbitration as an aide to the negotiations process. While not entirely dispositive of this view, the City exhibit, (p. 38, CB) showing percentage wage increases from 1982 forward, for City units including the Crash Rescue Firefighters, would appear to support the contention that the Crash Rescue Firefighters have done as well without arbitration as other City units have done with arbitration. The figures show that City police and firefighter units have done better at bargaining their wage increases than the blue and white collar units. However, the Crash Rescue Firefighters have done even better than both City firefighters and City police during the period covered by the exhibit. The advantage gained by the Crash Rescue Firefighters in bargaining between 1982 and 1990, over City firefighters, is 2.4%. While a Union exhibit shows the aggregate difference in actual salaries earned since 1969, there has been a modest closure in the relative salary levels of the two groups in the last ten years.

which the City is obligated to maintain for the fund. Thus the majority of Retained earnings is not available for use for other purposes, such as employee benefits.

The Union chooses to diminish the significance of other airport crash rescue units and argues they they should not be used for comparison purposes. Clearly the Union is motivated by the fact that the wage and benefit levels paid employees in these units are less than are paid the regular municipal fire departments. These are comparable units however and they meet the statutory definition of employees "performing similar services or requiring similar skills under similar working conditions" (CO).

Authority cited by the Union itself, by reference to dicta in the Lefkowitz award, supports the City's comparability position. The fact is that airport crash rescue firefighters and city firefighters, though sharing some common characteristics on their job descriptions are dissimilar in a number of areas. The significance of these differences may help explain different salary and benefit levels between airport firefighters and city firefighters in Syracuse, Rochester and Buffalo.

If, as the Union appears to argue, an appropriate comparison should be made between City firefighters and Crash Rescue Firefighters at Hancock airport, then a comparison of responses is appropriate between these two units as well as those working at Rochester and Buffalo. In all three cities city firefighters reply to a larger number of calls per capita than firefighters working at airports. (See CB, p. 10 showing that city firefighters in Syracuse, Buffalo and Rochester responded to roughly twice the number of calls as did firefighters working at airports in those respective communities).

Finally, the City of Yonkers New York, located in affluent Westchester County, is not comparable to the City of Syracuse. An examination of wages paid in Yonkers to blue and white collars positions and paid to municipal executives shows wages between 20% and 42% above those paid in Syracuse.

DISCUSSION:

The thoroughness with which the parties have set forth their positions can be appreciated when it is realized that their written submissions alone, without counting exhibits, totalled 196 pages. To this was added a days testimony.

In spite of all of this documentation, the Panel must address several preliminary questions in order to meet the statutory criteria required for developing its award. Those questions include:

1. A determination as to what units of employees constitute the most appropriate base with which to compare the terms and conditions of employment of the Crash Rescue Firefighters here,

The City objects to the use of Yonkers for comparison purposes, arguing that the economic situation of public employees working in Westchester County is so different from that in the rest of the comparison universe that they should not be utilized. The Panel agrees to the extent that economic conditions differ substantially but do not agree that Yonkers [and Albany] airport firefighters perform distinctly different duties than the rest of the comparison base. The Panel concludes therefore, that in terms of their duties and the conditions of their employment and also because of similar economic conditions, firefighting units working at airports in Buffalo, Rochester, and Binghamton are an appropriate comparison base with the Crash Rescue Firefighters here.

The final preliminary question regards the ability of the City to pay. The Union contends that the Enterprise Fund has ample resources with which to meet all of the demands of the unit. The City devotes most of its brief and argument to a review of the fiscal plight the City has been in since 1990. They argue that surplus funds reflected in the Enterprise Fund should not be viewed in isolation, that these funds may be used to fund "new operations" and should not be looked upon as a pot of unallocated money.

By placing the airport operations on a self-sustaining basis, funded through the Enterprise Fund, the City necessarily compels the Panel to examine the health of that fund. While the Fund may produce "surplus" moneys which eventually are available to the City for meeting obligations other than those at the airport, the funding needs of the airport must be satisfied first before other uses of the revenues in the Fund may be considered. The retained earnings available in the Enterprise Fund on January 1, 1992 were \$4,201,895.

This analysis shows therefore, that the status of the City's General Fund account is related to a degree to the fiscal status of the Enterprise Fund but in no way do the funds compare with each other in terms of their fiscal health. It follows therefore that because the General Fund is in a severely weakened condition, because of state aid cut-backs and for other reasons, making it impossible for the City to pay salary increases for employees paid from that Fund, it is illogical to assume that the same consequence must be visited upon the Crash Rescue Firefighters when their salaries are paid for from a distinctly different fund. The City's ability to pay Firefighter salary increases in 1991 and 1992 is greater than its ability to pay salary increases for employees being paid out of the General Fund.

The Union demands a salary increase costing \$142,667 in the first year of the contract, an increase averaging \$5706 per member of the bargaining unit. In the second year, the sum sought by the Union is \$158,292 for an average increase of \$6331. Presently (as of the contract expiration on December 31, 1990) top step Crash Rescue Firefighters are paid \$26,734. The salary increase being sought would raise that salary 22% in the first year to \$32,440. The second year increase (based on the new first year salary) would be 19.5%. The increase for the two years would be 41.5%,

The City proposes new language requiring that requests for vacation leave be made at least 30 days before the leave is to be taken, that the leave be taken in units of no less than 48 hours, and that units of 24 hours may be taken only after the 48 hour blocks are taken and where 24 hours notice has been supplied to the City. The proposal attempts to address scheduling problems related to inadequate notice and to the taking of vacation in piecemeal portions.

Discipline and Discharge:

The proposed language specifically states that discipline shall be for just cause and that "wherever reasonable and appropriate, ...progressive discipline [shall apply]". A schedule is offered in support of the proposal for progressive discipline where increasingly severe penalties are imposed for multiple offenses.

The City's disciplinary proposals are offered so as to make this portion of the cba consistent with similar provisions in other city cbas.

Employee Contributions for Health and Dental Insurance:

Under the City proposal single coverage deductibles for health insurance would increase from \$75 to \$125 and for family coverage the deductibles would change from \$225 to \$375. In addition, eligibility periods for new hires for both health and dental insurance would be changed from 30 days to 6 months.

The City's proposed changes are intended to address extremely large premium increases. Between 1981 and 1990 health insurance costs have increased 313% (See Chart, p. 42 CB).

Except for Union economic demands (wages, longevity, vacation, sick leave incentive), which the City opposes for the reasons set forth above, the City opposes the Union's other demands for the following reasons.

Most other bargaining units have a sick leave cap. Several have buy back provisions, however that provision is effective only at the time of retirement. The City believes that bargaining unit history may be useful in grievance arbitration and therefore wishes to see the current limitation on the use of bargaining demands dropped.

City's Reply Brief:

"Surplus moneys" identified by the Union in the Enterprise Fund are not as extensive as claimed (See explanation City Post Hearing Brief [PHB] p-6, Exhibits F-1). Retained earnings of \$4,201,894 represents accumulated funds for 1987 through 1991 and are,

...reinvested or kept within the enterprise fund, and also used for reserve accounts

without any improvement to other economic demands such as longevity. Both increases would be fully retroactive. The increases are so large that the Panel is compelled to analyze the figures using statistics in the comparison base of salaries.

The two 4% increases negotiated for the City firefighters⁵ would, if applied here, raise the top step salary to \$27,803 the first year and to \$28,915 in the second year. Not to be lost sight of, is the fact that City firefighter salary increases are prospective, not retroactive. Comparisons with these salaries therefore must be on the basis of the rate at which the salary is being earned and not to indicate that these salaries were paid in 1991 and 1992. That issue, full retroactivity, is very much at issue in the Union proposal here.

Average 1992 top step airport firefighter salaries in Rochester, Buffalo and Binghamton were \$29,543, 2% more than what salary in the second year would be in the Crash Rescue Firefighters unit if the two 4% salary adjustments granted the City firefighters were applied here. If Albany County Airport firefighters are averaged in, the salary drops to \$27,157 however.

An increase of 5% the first year and 5.5% in the second year would exceed the percentage increase granted (prospectively) to City firefighters by a modest margin and would exceed the cost of living increase. The adjustment would raise top step firefighter salaries to \$28,069 in the first year and to \$29,613 in the second year. To the extent that these increases are made retroactive, the actual earnings of Crash Rescue Firefighters would approach those of City firefighters for the years in question.

The City objects to retroactivity on several grounds, including an inability to pay and because retroactivity creates an imbalance with increases negotiated for the other bargaining units. This argument is flawed for two reasons. It assumes that what one bargaining unit negotiates should control the negotiations of others, an argument which has not found favor with PERB. The argument also assumes that the City's inability to pay wage increases from its General Fund resources, the source of funding for most of the municipal units, should also apply to the Crash Rescue Firefighters whose salaries, as was shown in the discussion above, are not directly tied to the General Fund.

On balance, the Panel concludes that the first year salary increase shall be described as a "bonus" of 5% calculated off of the 1990 salary schedule and paid commencing on January 1, 1992. The second year increase of 5.5% shall be applied to the Jan-

⁵ This figure disregards the 1993 salary adjustment and the enhanced retirement benefit which are effective in the City cba in 1993, since the Panel is limited to findings of no more than two years duration.

uary 1, 1992 schedule and paid from that date forward. This decision shall require that a lump sum be paid bargaining unit members to compensate them for salary adjustments implemented on January 1, 1992.

By comparison with other airport firefighting units, which is the most appropriate comparison base, the Union has failed to demonstrate why its proposal on staffing should be awarded. The proposal is denied.

With regard to their longevity proposal, the Union has demonstrated a disparity between benefits available in the Crash Rescue Firefighters unit and those available in both the City unit as well as in several of the other airport firefighting units designated above for comparison purposes. The comparison justifies increases at only the ten, fifteen and twenty year levels however. Moreover, the adjustments are further justified to comply with averages in Rochester and Buffalo. Accordingly, the Panel holds that after ten years of service a member will receive longevity increases of \$425, at the end of fifteen years the adjustment shall be \$675 and after twenty years of service the adjustment shall be \$925. The increases shall become effective on December 31, 1992.

It is difficult to calculate with any precision the consequence of adopting the Union's vacation proposal since additional incremental levels are being sought and since the eligibility of persons at various seniority levels are unknown to the Panel. The comparison offered above suggests an increase of approximately 25% in the amount of time which could be taken off. Because of uncertainty over the impact of the Union's vacation proposal however, and because the salary recommendation exceeds both the size of that granted the City firefighters and the limitation on retroactivity, the Panel is unwilling to adopt the Firefighter's proposal.

The Union's demand for sick leave accumulation sell back was insufficiently justified and the proposal is, therefore, denied.

With regard to retroactivity, that matter is discussed with each issue.

The limitation which the Union wishes to continue on the use of bargaining unit proposals in grievance arbitration is inherently illogical, whether or not the provision existed in previous cbas. It is commonplace in labor arbitration, where ambiguities in contract language arise, to resort to bargaining history for resolution. The proposal is denied.

Both of the City's sick leave demands (Sick leave authorization before a scheduled day off and a requirement for medical authorization) were offered without any demonstration of a need for the changes sought. The proposal is denied.

The City proposes altering the procedure for submitting vacation request. Sufficient justification is made to award the City's demand in part. The language shall be al-

tered to state that "except for unusual circumstances, employees requesting vacation time of more than 48 consecutive hours, shall make said request no less than two weeks from the date the leave is to commence." The balance of the proposal is denied.

The City's proposal to set forth: just cause and progressive discipline (where appropriate) as standards to be followed in disciplinary arbitrations, is imminently reasonable. Both standards have achieved almost universal acceptance in the arbitration of grievances regarding discipline and discharge. Both assure grievants of access to basic due process and sufficient notice of the consequences of wrong doing. The Union opposes these changes but failed to offer any cogent reason for that opposition. The City's proposal is adopted.

The Union objected to City proposals on health and dental insurance on the ground that they would be doubly penalized by the City which offered no wage adjustment but did seek increases in health insurance costs. The recommendation in favor of the Union demand for a salary increase moots this objection. Rising health care costs have become the center of the nation's political attention. The pressure to contain those costs is inexorable. The City seeks an increase in the deductible and an increase in the waiting time required for eligibility. A portion of the City's demands shall be granted. It is held that the deductibles shall be increased in the manner sought by the City. Eligibility requirements however, shall remain unchanged.

AWARD:

1. Salary, year one: The salary payment for 1991 shall be described as a "bonus". The bonus is achieved by adjusting the 1990 salary schedule upward by 5% across the board. The adjusted schedule is to become effective on January 1, 1992.
2. Salary, year two: Effective on January 1, 1992, the salary schedule in effect on that date shall be adjusted upward by 5.5% and applied across the board.
3. No award is made regarding staffing premium pay.
4. Effective on December 31, 1992, longevity payments of \$425, \$675 and \$925 shall be paid Crash Rescue Firefighters after their tenth, fifteenth and twentieth years of service respectively. Longevity payments in the amounts specified shall be paid in the years authorized and shall not be cumulative.
5. No change is made in the rate of vacation entitlements.
6. No change is found for the sick leave accumulation sell back provisions.
7. Confidentiality provisions which limit the use of bargaining demands in grievance arbitration shall be deleted from the cba.

8. No change is made in the procedures requiring medical authorization for the use of sick leave.

9. The following provision regarding the use of vacation time is made: "Except for unusual circumstances, employees requesting vacation time of more than 48 consecutive hours shall make said request no less than two weeks from the date the leave is to commence." The balance of the proposal is denied.

10. The discipline and discharge portions of the cba shall state that just cause and progressive discipline (where appropriate) shall be the pertinent standards governing the administration of this provision. The schedule for imposing progressive discipline shall be that contained in the City brief described at appendix A, Article 13, Section C.

11. Upon the date this award is signed, the following provision shall become effective and shall apply prospectively. The deductible for family plan health care coverage shall become \$375 and that for individual coverage shall become \$125. No change in the eligibility period is made.

12. The date of the implementation of the provisions set forth in this Award, are specified with each issue.

State of New York:
County of Erie :

I, Eric. W. Lawson Jr., do hereby affirm upon my oath as arbitrator that I am the individual described in and who executed this instrument, which is my award.
I concur with all of the findings set forth above.

June 15, 1993


ERIC W. LAWSON JR.

State of New York :
County of Onondaga :

I, Donald Killian, do hereby affirm upon my oath as arbitrator that I am the individual described in and who executed this instrument, which is my award.
I concur with all of the findings set forth above.

June 15, 1993

DONALD KILLIAN

I dissent from all of the findings above

June 15, 1993

DONALD KILLIAN

I dissent from the findings set forth, in the manner described below and for all others, I concur *Item # 11*

June 15, 1993

Donald Killian

DONALD KILLIAN

State of New York :
County of Onondaga :

I, M. Renee Baker, do hereby affirm upon my oath as arbitrator that I am the individual described in and who executed this instrument, which is my award.
I concur with all of the findings set forth above.

June 15, 1993

M. RENEE BAKER

I dissent from all of the findings above

June 15, 1993

M. RENEE BAKER

I dissent from the findings set forth, in the manner described below and for all others, I concur

Items, 1, 2 & 4

June 15, 1993

M. Renee Baker

M. RENEE BAKER