
In the Matter of Interest Arbitration

between

City of Jamestown

and

Jamestown Professional Firefighters
Association, IAFF Local 1772

Opinion

and

Award

(PERB Case Number IA201-025)

This interest arbitration was heard on April 17 and 18, 2002, in Jamestown City Hall, pursuant to the provisions of Section 209 of the New York State Civil Service Law. The tripartite arbitration panel was appointed to arbitrate the controversy through the procedures of the New York State Public Employment Relations Board. Panel member Lance Hedlund was appointed by the City, panel member Stefan Kundl was appointed by the Union, and panel member Howard Foster was jointly appointed as the neutral Chairperson. Upon submission of post-hearing briefs by both sides on June 24, 2002, the record was closed.

On July 17, 2002, the Chairperson sent a letter to the parties' representatives, outlining the panel's thinking to that point and urging the parties to make a further effort toward settlement. On August 16, 2002, the parties responded that they had met several times but were unable to resolve their differences.

APPEARANCES

For the Employer.

- Martin F. Idzik, Attorney
- Marilyn Fiore-Nieves, Corporation Counsel
- Joseph Bellitto, City Comptroller
- Ward Near, Labor Relations Administrator
- William Johnston, Battalion Chief, Fire Department

For the Union:

Charles DeAngelo, Attorney
Ronald DeSantis, President
Brian Boehm, Secretary
Michael Lombardo, Captain and Trainer, Buffalo Fire Department
Ed Fennell, Consultant

BACKGROUND

The issues in this arbitration are set forth in various demands by the Union to ameliorate the impact on firefighters of staffing reductions in the Jamestown Fire Department. The Union first demanded "impact bargaining" in September 1999, when the number of firefighters on the day shift was reduced from thirteen to twelve. The issue was apparently resolved temporarily, but it resurfaced in August 2000 when the shift complement was again reduced to twelve. The Union submitted yet another demand for impact bargaining in November 2000. On December 1, 2000, the Union tendered a proposal to deal with the impact of staff reductions by paying the remaining firefighters an amount totaling \$75,000 to compensate for their increased risk for the period July 1, 1999, through November 15, 2000. Since that time, the Union has periodically submitted revised proposals covering new periods, the latest for \$812,000 to cover the period July 1, 1999, through April 9, 2002. At the arbitration hearing, the Union offered some alternative ways to deal with the impact of the reductions, which will be discussed below.

The Union filed for interest arbitration on October 31, 2001. The basis of the demand is that "the inherent dangers of fire fighting have been increased as a result of the number of men operating equipment falling below minimum standards," and that "the decrease in manning levels has resulted in an increase in danger and workload, which should be fairly compensated." The City's response to the demand for arbitration stated:

During the course of negotiations, the City offered the following as relief for the staffing loss in the Jamestown Fire Department: (1) introduction of part-time firefighters; (2) use of some volunteer firefighters, and (3) implementation of a two-tier wage system.

On February 15, 2002, the City laid off five firefighters and instituted a rotated closing of one fire station. That has had the effect of further reducing the normal shift complement to nine. On February 25, 2002, the Union filed additional demands for impact negotiations covering the laid-off firefighters, dealing with severance pay, medical insurance, preferential hiring, retraining, and seniority.

POSITION OF THE UNION

The Union notes, first of all, that the current level of fire protection in Jamestown is inadequate. Jamestown is a city of about 31,000 people, covering 9.5 square miles. At any one time there are two engine companies and one ladder company open, with typically nine firefighters, and sometimes as few as six, on duty. Within the boundaries covered by the Fire Department are numerous factories and businesses, some of which deal in hazardous materials. There are also a number of multiple-person rescue sites, including schools and multi-unit residences. The city is located near six major transportation routes on which hazardous chemicals are transported.

The Union further observes that Jamestown is experiencing a major development renaissance, and there are a number of special events that bring large crowds into the city. There are also many vacant homes and industrial sites that are prime candidates for arson fires. Many buildings in Jamestown were built with "balloon construction," which allows a fire to spread rapidly in a structure. The older industrial buildings have oil-soaked floors and dry timbers. These conditions place a premium on rapid response time when an alarm is

sounded. Complicating the challenge for firefighters are narrow access streets and hilly terrain. The spread of fire from building to building is a major concern.

The Union states that there has been a steady erosion in the number of fire stations and companies over time. Since 1974, the number of engine companies has been reduced from five to two. The current shift strength is nine firefighters plus one Command Officer (down from 13 plus one before 1999), and the firefighter total is 55 (down from 75 as recently as 1992), including four firefighters who are unavailable for duty because of work-related injuries. The City rejected several proposals from the former Fire Chief to ameliorate the impact of the reductions. This decline in staffing, moreover, has occurred in the face of a steady increase in calls, which rose from 1,233 in 1977 (when there were 21 firefighters per shift) to 3,559 in 2001.

The Union contends that too few fire companies and too few firefighters on duty directly affect the safety of firefighters at a fire scene. As explained by union witnesses, proper staffing levels have been the subject of numerous studies, which have consistently found that inadequate staffing poses risk both to the public and to firefighters. The key elements in controlling the spread of fire are the quick arrival of firefighters in sufficient numbers to attack the fire at the point of origin. Small increases in the speed with which manpower can arrive and be deployed means large increases in victim survivability and firefighter safety. There are certain critical jobs that need to be done at a scene, and they have to be done by firefighters. Delay raises the probability of flashover, the point at which a small fire becomes a large fire and at which the danger to firefighters is extreme. The National Fire Protection Association has recommended that fire companies be staffed by at least four firefighters, and more in high-risk areas.

The correlation between firefighter safety and the number of personnel responding to the alarm, asserts the Union, has been demonstrated in study after study, including ones in Columbus (Ohio), Seattle, Dallas, and Providence (Rhode Island), and also a multi-city study done at Johns Hopkins University. Indeed, the former Chief of the Jamestown Fire Department consistently argued that even at 13 firefighters per shift the Department was understaffed. The studies cited by the Union show that the recommended minimum manpower level to respond to a standard house fire is 14 firefighters, and more for fires requiring aerial attacks. The connection between adequate staffing and firefighter safety has been acknowledged by organizations representing not only firefighters but city managers. The current situation in Jamestown is a disaster waiting to happen.

The adverse consequences of the staffing shortfall in Jamestown are varied, argues the Union. Common sense says that there is an impact on the remaining firefighters who feel compelled to complete the necessary tasks. With station closings, there have been a large number of "incorrect" runs — that is, runs outside a fire company's base — resulting in a significant increase in the distance traveled and response time. The increase in response time directly increases the severity of the fire, the hazards to firefighters and civilians, and the rate of firefighter injury. The link between staffing and injuries has also been documented in the studies cited by the Union. On the ground, according to Union testimony, the practical realities are that many tasks do not get done, there is no backup, and there is often no relief. Moreover, in a radio interview, the former Chief pointed out that with fewer firefighters the task of coordination among them is adversely affected:

We are now at a situation where to have an effective level and have an effective response and suppression and rescue, we have to commit everybody that's on duty, and we have to recall personnel, and we have to take people out of certain technical positions such as fire prevention code enforcement, we

have to take the training officer, which is the Battalion Chief, we have to take the Deputy Chief and sometimes the maintenance person, we have to send everybody to the scene and we're still not functioning properly, because it is confusing once you get there because you have people who aren't assigned to attack crews and you have to decide, okay, where's this person been, and you have to worry about the accountability.

The consequences of inadequate staffing were illustrated by testimonial accounts and videotapes of three fires, says the Union. One fire that caused extensive damage broke out 100 yards from a closed fire station. At another fire a citizen had to help with a ladder, and extrication was performed by ambulance personnel not trained for the task. It is critical in dangerous situations for firefighters to have backup in case they need rescue themselves. The inadequate staffing has recently been exacerbated by adding Jamestown to the first-alarm responses of several surrounding towns. Asking Jamestown firefighters to cover an expanded area when they cannot adequately staff their own fires is an invitation to disaster.

In addition to the impact on working firefighters, the reductions occasioned by layoffs have produced a particular and obvious impact on those highly trained firefighters who were laid off in February 2002, for whom the re-employment prospects in firefighting are limited.

The Union further asserts that the City's defenses and proposals should be rejected by the panel. The City's arguments that the staff reductions have had no impact on firefighters are without merit. An ISO report cited by the City, purporting to show that the City's insurance ratings have not declined, was issued before the layoffs and station closings in 2002. Moreover, the credits assigned to the City by the ISO are not plausible, since they ignore the changes that have taken place since 1990. The City's attempt to explain the injury data presented by the Union are likewise unavailing.

As for the City's four proposals, contends the Union, they do not realistically address the problems created by the staffing reductions. (1) The proposal to allow the City to hire

part-time firefighters makes no economic sense, as the former Fire Chief argued, since it would be cheaper to hire an equivalent number of full-time firefighters. Moreover, the panel should not rewrite the collective bargaining agreement by directing such a substantial change in the parties' relationship. Such changes, if they are to be implemented, should be negotiated by the parties. (2) The proposal to rely on volunteer firefighters was advanced tentatively by the City, and for good reason. There is not an adequate volunteer base in the region; they are not equipped to fight fires in cities; and the available volunteers are already committed to fighting fires in their own villages. Again, urges the Union, the panel should not accept the City's invitation to remake the labor relations environment. (3) The proposal to create a two-tier pay structure is curious, states the Union, since the Union itself proposed an 8-year rollback plan during negotiations, and it would not object to having that proposal incorporated into the panel's award. (4) The City's proposal to allocate pagers to firefighters is not opposed by the Union in principle, but it opposes the City's attempt to force pagers on firefighters. In any case, although pagers are not a panacea, the Union would not object to a directive to cooperate in the development of a pager policy. In summary, the defenses and proposals offered by the City do not address the obvious impact of the staffing reductions on its firefighters.

The Union rejects the City's arguments that it is unable to maintain 13 firefighters (plus a Command Officer) per shift. The City's picture of a community in economic distress is contradicted by the Union's evidence of an economic renaissance. The City is rebounding, and its recent problems are due mainly to the lack of fiscal discipline, as shown by the testimony of the Union's financial consultant, Ed Fennell. The dramatic tax increases that the City has been forced to enact recently would have been unnecessary had it

implemented smaller increases over the preceding years, a policy that would have avoided the current deficit. It also should be noted that the City owns its own utility company, which reduces the cost of living in the city. In addition, Jamestown has been paying a disproportionate share of the cost of the local community college, an inequity that was recently corrected by the county legislature, a move that will afford a significant financial benefit to Jamestown. Finally, while it is true that Jamestown is not getting its fair share of state aid, the answer is not to burden firefighters but rather to lobby effectively for the proper aid.

In sum, the City clearly can afford to pay a substantial impact remedy with small incremental tax increases. Its debt service is less than that of Niagara Falls, which was ordered to pay a substantial impact settlement to its firefighters. The settlement can also be paid from the savings gained from the reduction of staff, along with revenue sources that the Union has suggested. The fact that the City can afford an impact settlement is further supported by an interest arbitration award to the Jamestown Police. The panel in that case considered and rejected many of the same arguments offered by the City here, and it awarded pay increases only ten months ago. In that case, moreover, the City, despite claiming dire straits, offered the PBA 3.5 percent pay increases, which the City Comptroller has said was fair. Finally, it is important to note that the City Council has made a choice here. They have chosen to pay an impact award instead of restoring positions, despite being warned by the former Chief and others that this is the risk they were running.

The Union notes that it has offered several alternatives as remedy for the impact of staffing reductions. The initial demand was for the City to pay all the savings gained from staffing reductions to the remaining firefighters. Other models are contained in interest

arbitration awards in Batavia and Niagara Falls, both of which granted percentage wage increases or payments. In Batavia, the panel provided "credits" to the City for successive levels of staffing restorations; that is, the more the restorations, the less the City would have to pay in wage increases. The Niagara Falls award involved one-time wage payments for the period during which the staffing reductions were in effect. What distinguishes Jamestown from the situation in Niagara Falls is that the positions in Jamestown have not been restored and may never be restored. The first impact issue for the Union is how to compensate the laid-off firefighters, who have clearly been affected by the City's actions.

The best approach, asserts the Union, would be for the City to restore the positions and bring the staffing level back to 68 firefighters, so that shift staffing can be maintained at thirteen. Failing that, the City should pay a percentage increase of 0.5 for each firefighter not rehired. A second approach would contemplate a "shift call back award" equal to what the City would have paid to firefighters to come in to work to maintain a sufficient number of firefighters on the job, or about \$812,000. A third approach is to pay firefighters the equivalent of what the City has saved by trying to balance the budget on the backs of firefighters, or about \$1,131,000. The first approach is best because it allows the City to determine the appropriate balance between staffing levels and impact payments. Any payments made under this approach should include provision for the laid-off firefighters. Moreover, impact payments should not be denied to firefighters off on disability. These firefighters have clearly been affected by the staffing reductions.

For all the foregoing reasons, the Union urges that the panel make a "just and reasonable" award that recognizes the clearly demonstrated impact of staffing reductions on firefighters.

POSITION OF THE CITY

The City points out, first of all, that Jamestown's fiscal condition and economic outlook are weak. It has had an operating deficit in four of the past six years, caused largely by health care costs for employees. The City's bond rating has been downgraded to the lowest investment grade. Its supplemental state aid is the lowest of a comparable group of upstate cities. Its population has declined by 24 percent in the last four decades, and by 8.5 percent in the 1990s, during which time its tax base fell by 5.5 percent. In the past two years, during which the base was still falling, property tax rates were raised by more than 25 percent. In February 2002, the City was within \$3 million of its legal tax limit. Its full value tax rate in 2000 was at the median of upstate cities. Jamestown has continued to experience the closing of businesses, and the remaining businesses have made it clear that the cost of doing business and of government is too high.

The City contends that the Union has failed to prove that the decrease in the manning level of the Fire department has caused an increase in danger to firefighters. Its case was based on pure speculation, with no facts to substantiate the allegations. A review of firefighter incident reports for 1999, 2000, 2001, and 2002 shows that few of the injuries suffered by firefighters were even arguably caused by inadequate manpower. Almost all of the injuries would have happened even if there had been many more firefighters at the scene. The Union never proved, or even attempted to prove, that any injury occurred because of the loss of manpower. The Union did not cite a single instance in which a firefighter was placed in more danger by the reduction in manning levels. Its speculative claim on this point is not supported by the reports of its own members. Although firefighting

is an inherently dangerous occupation, there is no evidence that it has become more dangerous in Jamestown.

The City argues further that, although the Union has claimed that the manpower reductions have also increased risk to citizens and property, that claim is also speculative. There was no example offered of a citizen having been injured in a fire. And although there was no proof that there is an increased risk to property, the City acknowledges that this argument is supported by common sense. The risk to property was in fact the thrust of the Union's case, and the City concedes that there is more likelihood of property damage with fewer firefighters on the job. That, however, is a choice that the residents of Jamestown have made. By opposing tax increases they have indicated their willingness to assume the greater risk rather than pay more taxes, just as individuals may choose to assume more risk in preference to higher insurance premiums. In any case, the argument that danger to property has increased is not supported by the recent insurance rating received by the City in 2002. That rating was unchanged from the one the City received more than ten years earlier.

The City also asserts that the Union has not shown that the staffing reductions have increased the workload of firefighters. There was not a single example of a firefighter having to do more or harder work when the shift crew was reduced from thirteen to twelve. The Union suggested that with fewer firefighters some tasks do not get done, but this is not evidence of firefighters' working harder.

The City contends, in addition, that it has made several reasonable proposals to increase the number of firefighters responding to fires, proposals that have been flatly rejected by the Union, despite the Union's purported concern about increased danger. The

Union's goal has instead been to obtain more money for firefighters, who are already paid very well, and the hiring of more full-time firefighters, which is economically out of the question for the City. The proof of the Union's real agenda of higher wages and bigger pensions lies in its position on pagers. The City has sought to implement a fully voluntary practice of allocating pagers to firefighters so that they could respond more quickly if their friends on duty needed help. The Union's response has been to file charges and grievances and to seek compensation. The Union has also opposed mutual-aid pacts with volunteer fire companies in the region, arguing that these firefighters are not worthy, even though many Jamestown firefighters choose to live in communities served by volunteer companies.

The City notes, finally, that it has taken a number of significant steps to improve firefighter safety. It has purchased electronic equipment to aid communication, cameras to aid in locating fires and people, new and enhanced firefighting gear, new fire trucks, and other items. The Union did not incorporate any of these improvements in its speculative testimony on the increased dangers to firefighters.

For all these reasons, the City asserts that the Union has provided no proof to support its impact demand, and it urges that no additional monies be awarded to the firefighters based on the Union's unsupported allegations.

FINDINGS AND OPINION

It will be helpful at the outset for the panel to be explicit about its understanding of its charge. Under the interest arbitration provisions of the Taylor Law, we are directed to "make a just and reasonable determination of the matters in dispute." In this case, the "matter in dispute" is the reduction in the staffing of the Jamestown Fire Department in terms of both

the overall size of the force and the number of firefighters normally working on a shift. More specifically, since the determination of staffing levels is under the law a prerogative of the City's management and not a mandatory subject of bargaining, the matter in dispute here is the Union's demand for compensation for the impact of the reductions on the firefighters who remain on the job.

We acknowledge and accept the City's argument that the impact of the staffing reductions on the citizens and property owners of Jamestown are not issues for the panel to address. As the City argues, the citizenry is entitled to decide how much fire protection it wishes to buy, and to make its own determination as to how much risk to person and property it is willing to bear in preference to paying the cost of additional protection. These are policy decisions properly left to them, acting through their elected representatives. Accordingly, to the extent that the Union's arguments on impact speak to risk to property and to persons who are not firefighters, they are not relevant to our deliberations.

Under the law, however, the impact of staffing reductions on risks borne by firefighters is clearly not irrelevant for our purposes, since the law recognizes that even those decisions exclusively within management's domain may have an impact on the bargaining unit that must be negotiated. While the City's decision-makers may make unfettered staffing determinations, they must negotiate and, if necessary, arbitrate the *consequences* of those decisions on bargaining unit members. More specifically, while the City's taxpayers through their representatives may decide unilaterally that they are willing to have less fire protection for themselves and their property, they may not decide unilaterally to increase the risks and burdens placed on the firefighters providing the protection without bargaining over appropriate compensation or some other *quid pro quo*. The questions before the panel,

then, are (1) whether the staffing reductions that have taken place since 1999 or 2000 have had an adverse impact on firefighters; (2) if so, whether the impact is such that compensation is indicated; and (3) if so, how much the compensation should be and what form it should take. All this, of course, must be assessed consistently with the standards of the interest arbitration provisions of the Taylor Law.

(1) *Staffing and Risk.* On this threshold question, the panel is persuaded that the staffing reductions have had an adverse impact on the City's firefighters, largely in the form of a heightened risk that firefighters bear in their daily jobs. The City acknowledges that the proposition that fewer firefighters means increased risk to property "makes common sense"; we believe that the increased risk to firefighters is also intuitive. Having fewer fire companies necessarily increases the average time to respond to a fire, which in turn means that the average fire that the firefighters must battle will be larger and the structures that are on fire more unstable. Having fewer firefighters to attack a fire means that the tasks that have to be done when the crews arrive at the scene will take longer as they are spread more thinly, and it also means that there is less capacity for the firefighters to protect each other. Fewer firefighters to perform the same necessary tasks also suggests more stress and more fatigue, which seem intuitively to heighten the risk of injury.

The Union's evidence in this case reinforces these intuitive conclusions. Its expert witness, Captain Michael Lombardo of the Buffalo Fire Department, who has broad experience in firefighter training, described the consequences of delay in attacking a fire, particularly in terms of a "flashover" condition in which a fire spreads rapidly, endangering the firefighters trying to control it. He also described in detail the specific tasks that various firefighters would have to perform at a routine fire, tasks that will necessarily take longer to

perform the fewer hands there are at the scene. Lombardo also gave testimony on industry standards for firefighter staffing and on a number of studies that have linked staffing levels to the safety of firefighters at the scene.

Although the ground rules that the parties adopted in presenting their cases precluded cross-examination of witnesses, it is noteworthy that the City's case contained no direct rebuttal of the points made by Lombardo or of the conclusions reached by the studies and reports submitted by the Union. We make this point because we regard it as significant that, in its decision-making regarding Fire Department staffing, there is no evidence in the record before us that the City investigated or considered the effects that reductions may have on firefighters. Put another way, in weighing the considerations of staffing levels (and their impact on firefighters) and the City's perceived fiscal constraints, the City does not appear to have asked whether there is a level below which staffing becomes more risky to firefighters than is typical for the job. In opposition to the Union's side of this case, in short, there is no professional testimony or literature to help the panel reach the conclusion that, even with the staffing reductions, firefighters in Jamestown are carrying no more than the normal risks of what everyone acknowledges is a dangerous job.

As noted, the Union's submission contains material describing and citing from a number of studies that investigated the links between firefighter staffing and both firefighting effectiveness and firefighter safety. In addition, it contains safety standards issued by the National Fire Protection Association (NFPA), a group representing the firefighting profession at large. Although one might debate the inferences to be drawn from these studies and standards as to the "correct" or optimal (or minimally acceptable) staffing level for a particular fire department or locality — especially given competing considerations, such as

community wealth and resources — the simple conclusion that, other things equal and within any relevant range of staffing, firefighters are more at risk at a fire when their numbers are lower is difficult to escape.

NFPA Standard 1500 on Occupational Safety and Health, issued in 1987, promulgates the standard that “the fire department shall provide an adequate number of personnel to safely conduct emergency scene operations. Operations shall be limited to those that can be safely performed by the personnel available at the scene.” It later states:

It is recommended that a minimum acceptable fire company staffing level should be four members responding on or arriving with each engine and each ladder company responding to any type of fire These recommendations are based on experience from actual fires and in-depth fire simulations, critically and objectively evaluating fire company effectiveness. These studies indicate significant reductions in performance *and safety* when crews have fewer members than the above recommendations. (Un. Ex. J, emphasis added.)

This benchmark is reiterated in NFPA Standard 1710 on Organization and Deployment of Fire Suppression Operations *et al.*, issued in 2001, which indicates its purpose as including both the protection of citizens and “the occupational safety and health of fire department employees.” (Un. Ex. K-a) The standard is described as setting forth

the minimum criteria related to the effectiveness and efficiency of public entities which provide fire suppression, emergency medical service and special operations. Both efficiency and effectiveness are specifically related to protecting two groups: the public and fire department employees.

In addition to the four-person recommendation on fire *company* staffing, the NFPA’s question-and-answer commentary on Standard 1710 addresses deployment requirements in a “full alarm assignment”:

The fire department shall have the capability to deploy an initial full alarm assignment within the eight-minute response time. The number of people required falls between 14 and 17, depending on whether or not an aerial is

used, if both pumpers are being used [to] provide attack and backup lines and if a safety officer is required. (Un. Ex. K-b)

The literature on firefighter staffing and its relation to firefighter safety is discussed in both the NFPA's commentary on Standard 1710 and a publication of the International Association of Fire Fighters (IAFF) titled, "Fire Fighter Staffing: Critical Considerations" (Un. Ex. I). The NFPA cites the following sources, among others:

- a 1981 study of the Seattle Fire Department showing an inverse relation between the strength of fire companies and the incidence and severity of firefighter injuries;
- a 1991 study of multiple cities by the IAFF showing higher injury rates with smaller crew sizes;
- a 1990 report by the Nevada Occupational Safety and Health Review Board, declaring that fire trucks with fewer than four firefighters are "unsafely manned";
- a 1993 study by the Austin Fire Department finding that injury rates are significantly higher when crews are smaller;
- a 1982 survey of 150 fire departments by Centaur Associates (for FEMA) which found that "there was a direct correlation between fire fighter safety and the number of personnel on the initial fire attack";
- a 1979 report by the International City Management Association endorsing NFPA Standard 197 on resource deployment, which calls for an initial attack by "a minimum of 12 to 15 personnel plus a chief";
- a 1980 study at Ohio State University finding "a negative statistical correlation between the size of the fire fighting complement and the probability of fire fighter injury."

The IAFF publication, in a chapter titled "Staffing for Initial Fire Attack and Fire Fighter Safety," cites most of the studies and reports noted by NFPA, as well as additional studies using varying methodologies but reaching similar conclusions. These include studies of company size and firefighter injuries conducted in Dallas, Phoenix, and Providence, and one by researchers at Johns Hopkins University. The publication also cites a 1988 report by the International City Management Association concluding that an initial

attack on an interior structural fire, to be successful and safe, requires three trucks with 15 to 16 personnel.

The Union also presents data showing a significant increase in time lost by Jamestown firefighters due to injuries over the past five years. (Un Exs. O and TT) The City responds by pointing out that in reviewing incident reports for 2000, 2001, and 2002, it could identify very few injuries that could be explicitly linked to inadequate manpower. The issue here, however, is not whether firefighters have actually been injured on the job as a result of lower staffing, but whether the *risk* of injury has risen. A dangerous condition does not become less dangerous simply because the potential adverse consequences did not in fact materialize. We note also that the data on actual injuries largely predates the most recent and most substantial reduction in staff, when a fire company was effectively closed (through rotation) and the normal shift complement was reduced from twelve to nine.

(2) *Risk and Compensation.* As noted, it is universally acknowledged that firefighting is inherently a riskier profession than most others, and it follows that at any given time the pay attached to the job incorporates a risk premium. We cannot say, however, that the relation between risk and pay is at any time precise, or that we can derive a specific formula that conclusively correlates variations in risk and pay. Even if one accepts, as we do, that within relevant ranges the risk borne by firefighters varies (other things being equal) with the complement of the firefighting force, it does not necessarily follow that any change (up or down) in the size of the force should be immediately reflected in greater or less firefighter compensation. As a practical matter, in a particular department the prevailing pay of its firefighters may already incorporate a premium that reflects even greater risk than is standard for the job, such that a reduction in staff does not warrant any additional

compensation. Or it may be the case that reductions are *de minimis*, producing relatively inconsequential increases in the level of risk. In short, determining when the greater risk produced by staff reductions reaches a point at which a pay adjustment is warranted cannot be done with scientific precision. The charge to the panel, however, is to evaluate and pass on the Union's demand for "impact" compensation, and we cannot satisfy that charge without making a determination on whether the point at which compensation is warranted has been reached. Thus the relevant question for us is whether the reductions in staffing have significantly increased the risk borne by Jamestown firefighters -- to a level appreciably higher than the norm for the job, where the risk premium already reflected in their pay is inadequate. We conclude that the answer to that question is affirmative.

The record shows that in the mid-1970s the Jamestown Fire Department, covering the same territory, employed about 100 firefighters, nearly twice the number that are employed today. As recently as the early 1990s, the Department employed 75 firefighters. Until 2000, the Department deployed at least thirteen firefighters from four companies to a fire scene, a number that has since been reduced to nine firefighters and three companies. On the face of it, then, it can scarcely be gainsaid that the reductions in staffing have been substantial. It is clear that in effecting the reductions, and especially the most recent ones in 2002, the City has made a choice to buy less fire protection, a choice that was theirs to make. It is also clear, we believe, that the job of firefighting has been made riskier, in that the staffing has been reduced not only to levels far below the historical norms in Jamestown, but also below levels found in cities of comparable size and below the minimum levels cited in the studies and reports discussed above.

The City may argue that the higher levels of staffing in the past reflected a willingness and ability of Jamestown taxpayers to purchase more fire protection for themselves, and not a judgment that those higher levels were necessary for firefighter safety. We would find that argument more persuasive if the reductions had not been so large over time, especially recently. There is evidence of resistance to the post-2000 reductions not only by the Union but also the Fire Chief, who vocally resisted the reduction of the shift complement from thirteen to twelve, even temporarily reversing his own initial decision to do that in 2000. In 2000 the City was already experiencing the financial stress that is at the core of its argument in this arbitration, yet it was still deploying thirteen firefighters on a shift. To conclude that reducing that number to nine over a short period did not have a significant impact on firefighter risk is to suggest, even in the face of what were seen as severe financial pressures, that the City was actually deploying far more firefighters than necessary to keep their risk within normal margins. And to suggest that increasing the risk to citizens does not increase the risk to firefighters implies that in a fire situation risks for citizens and firefighters are unrelated, a proposition that is at best counter-intuitive.

It is also relevant to consider evidence on staffing in other communities. We believe it is reasonable to infer that such staffing reflects judgments by those communities which address not only protection of citizens and property, but also firefighter safety. The evidence in the record is not extensive, but it includes testimony from Brian Boehm, a Union officer, on information he obtained from five fire departments in a number of Upstate New York cities with populations comparable to Jamestown's. (Un. Ex. R) Boehm's survey showed the minimum deployment on a shift for these cities as ranging from 11 to 15 (compared to Jamestown's 9) and the maximum deployment ranging from 16 to 18 (compared to

Jamestown's 11). The City did not offer any testimony or evidence on how its staffing compares to other localities with professional fire departments.

As noted above, the literature on firefighter staffing, much of which explicitly relates staffing to firefighter safety considerations (as well as firefighting effectiveness), speaks to norms for both company size and the total number that should be available to attack a fire. The minimum company size referenced in the literature ranges consistently upward from four; Jamestown's companies run with three firefighters. The total deployment to a structure fire generally ranges upward from 14, although there is one reference in an NFPA standard to as few as 12 firefighters. There is nothing in the literature submitted to this record that remotely suggests a force of nine firefighters as an appropriate norm for attacking a fire.

We accordingly conclude that, for purposes of linking compensation and risk, at shift deployments lower than twelve (plus the Officer-in Command), firefighters are assuming risks beyond the range of the risks normally associated with their job. There is thus an impact on them from the City's decision to reduce both the firefighting staff and the shift complement for which the firefighters should be compensated.

(3) Level and Form of Compensation. Given the foregoing findings, we believe the logical approach to compensating firefighters for their added risk is to link the compensation as directly as possible to the added risk incurred day to day by firefighters as the result of staffing decisions by the City. That risk reflects the *potential* of injury or death on the job, and it varies, clearly, with the magnitude of the staffing reductions as reflected in the deployments on each shift. Before we reach the *level* of compensation, however, we must address the ability-to-pay argument stressed by the City.

The evidence does indeed show that Jamestown has experienced demographic and economic reversals in recent decades. Its population has fallen by about 20 percent since 1970. Its tax base has also declined, even while its tax levies have risen. Between 1990 and 2002, total property taxes rose from 3.7 percent of the taxable assessment to 5.7 percent. Although the Union suggests that Jamestown is on the verge of an economic "renaissance," and while there are indeed some hopeful signs in that direction (evidenced by some recent downtown development), this projection is clearly speculative. The City notes that employers have complained vocally about the cost of doing business in Jamestown, and that further tax increases could drive them away. In rebuttal, the Union points out that the City refrained for years from raising taxes at all, so that when the increases became unavoidable they were larger than they needed to be. The issue, however, is not so much how much taxes have risen in the past few years, and at what pace, as it is the level that they have now reached.

The Taylor Law requires that we take into consideration various factors in arriving at our determination, including "the interests and welfare of the public and the financial ability of the public employer to pay," and "comparison of peculiarities in regard to other trades or professions, including specifically (1) hazards of employment" In balancing these considerations, we judge that it is appropriate that the firefighters be compensated for the additional risk they bear as a result of the substantial staffing reductions that have been effected in Jamestown, but only to an extent that lies within the resources of the City. On the point of ability-to-pay, we make three observations. *First*, in February 2002, the City offered to settle its contract negotiations with the Union, including those over the impact of staffing reductions, with five years of pay increases and a promise to make a "good faith effort" to maintain 12-member crews on all shifts, conditioned on health insurance and other

concessions by the Union. Even with the concessions, the establishment of a 12-firefighter schedule (and the rescinding of layoffs) and the pay increases would clearly represent higher expenditures for the Fire Department than it is bearing now. *Second*, the record contains data on the 2000 true value tax rates for Jamestown and 13 other small cities in Upstate New York. The rates range from \$9.99 to \$18.52, with Jamestown at \$14.54, just about at the median. These numbers, which were the latest available, do not reflect the most recent tax rate increases in Jamestown, but they do not reflect increases in the other cities either. *Third*, cities in New York have constitutional tax limits. In 2002, Jamestown's limit was just under \$14 million, and its tax levy was just over \$11 million. Thus the City is constitutionally empowered to raise nearly \$3 million more than it is raising. (Updated figures for 2002 submitted by the Union indicate a "constitutional tax margin" of just over \$3 million.) Thus the evidence shows that Jamestown's citizens are *able* to tax themselves more to compensate fighters for the additional risks they have been asked to bear, and in doing so they would not be taxing themselves at a level that would be grossly out of line with the rate at which other small municipalities have been willing to tax themselves to provide public services. The community resistance to higher taxes cited by the City is no doubt real, but the evidence suggests that at current levels it is less a question of ability to pay than willingness to pay.

We thus return to the question of how most appropriately to compensate firefighters for their risk. The approach we favor is to have the City establish a fund into which is deposited sums of money proportional to the staffing reductions that prevail on any given shift, and then to have the City pay out this fund to working firefighters on a periodic basis. (The reference here to "working" firefighters is expressly intended to exclude those

firefighters on §207-a leave, who we believe are not subject on a day-to-day basis to the added risk that this system is addressing.) The operation of the system will be spelled out in the Award below. The system will be prospective, although we will also award a lump-sum payment retroactively for the period January 1, 2002, to October 1, 2002. Two other sets of issues raised in this case remain to be addressed: the City's proposals, and the impact of the staffing reductions on the firefighters who were laid off in February 2002.

City Proposals. The City has made several proposals aimed, directly or indirectly, at ameliorating the impact of staffing reductions, either by providing for access to more manpower when it is needed, or by changing the economic parameters so as to allow the City to provide the staffing with less financial stress. These proposals deal with two-tier wages, use of pagers, use of volunteer firefighters, and adding part-time firefighters. We address these four issues in turn.

During their negotiations the parties both had proposals on establishing a separate pay scale for firefighters hired after a certain date, and we believe such a system should be adopted as a way to help the City to either enrich its staffing (and thus avoid or lessen "impact payments") or make the impact payments. We have reviewed the proposals made by both sides, and we have determined that a combination of elements from each of the proposals would constitute an appropriate package. The details of this package are set forth in the Award.

On the issue of pagers, we are persuaded by the City's argument that it is wholly appropriate to ask firefighters to carry pagers, and that asking them to do that is not a change that warrants additional compensation. To the extent that the Union is protesting the staffing reductions because of their impact on firefighter safety, it is difficult to understand

any resistance to a system that will clearly improve the margin of safety for firefighters who are answering a call by enabling off-duty firefighters to be reached more quickly and expediently when necessary. The Award will reflect this sentiment.

The City has also proposed that it have more flexibility in entering into Mutual Aid agreements with volunteer fire companies in surrounding communities. Here again, to the extent that this arbitration is about firefighter safety, any arrangement that has the potential of putting more fighters at a scene more quickly directly and positively addresses the "matter in dispute." While we do not believe that reliance on volunteer companies from outlying areas can properly be a substitute for on-duty crews (or indeed for reachable off-duty firefighters), having them available through Mutual Aid to supplement the City's crews strikes us as a constructive response.

The City's proposal for part-time firefighters apparently has the purpose of saving money in two ways: by affording greater flexibility in staffing shifts (particularly with respect to replacing firefighters who are not available for their regular shifts) and thus reducing the need for overtime, and by paying the part-time firefighters a lower wage and benefit package than they would receive as full-time firefighters. To the extent that the deployment of part-time firefighters would help the City maintain more trained firefighters on the job within its available resources, we believe that it is responsive to the aim of ameliorating the impact of staffing reductions on full-time firefighters. However, a proposal to employ an entirely different class of firefighters raises a host of questions regarding their rights, responsibilities, and compensation that we are not equipped to address in the absence of a thoroughly developed outline of the prospective job, something that we do not have in the record. Accordingly, although we believe that employing a contingent of part-time firefighters could

be constructive in meeting the twin objectives of enhanced staffing and cost control, we are unable to fashion an award along these lines.

We urge the parties to thoroughly explore the possibility of allocating resources to part-time firefighters in their upcoming negotiations, and we particularly urge the Union not to dismiss the prospect summarily. The parties will obviously need to address all the various issues surrounding the rights and compensation of part-timers. Any use of part-timers should not affect the current system of "selling back" overtime earned by a full-time firefighter working the regular schedule. Further, the recall rights of the laid-off firefighters will have to be considered in the light of available part-time jobs. And we further stress that any consideration of a part-time contingent should be for the purpose of *increasing* the shift staffing above current levels (to ameliorate the impact), and not to replace full-time positions.

Pending these deliberations, and in the interest of allowing the City more staffing flexibility with its full-time firefighters, the award will adopt a City proposal to establish a flexible schedule for up to four firefighters. The intention of the award is that the flexible schedule for full-time firefighters should expire when all issues surrounding the part-time firefighters have been resolved.

Impact on Laid-Off Firefighters. There can be little quarrel with the Union's argument that the impact of the City's staffing reductions was felt most keenly by the firefighters who have been laid off. It must be acknowledged, however, that these were junior firefighters, who at the time of their layoff had not yet built up a great deal of "equity" in their positions. The panel has determined that the Union's proposals on medical insurance and other benefits, additional re-employment rights, and retraining should not be addressed here. As for severance pay, we believe that a modest payment, keyed to each employee's unused

sick leave at the time of layoff, would appropriately acknowledge their service and the adverse effects of their layoff. In addition, we will provide those firefighters with an option to forgo the payment in consideration of further accumulation of sick time post-layoff.

AWARD

1. Effective October 1, 2002, The City shall establish a fund to compensate firefighters for the added risk of working on shifts that are staffed with fewer than 12 firefighters ("plus one," or not including the officer-in-charge). The shortfall from 12+1 on each shift will be converted to "units" as follows:

11+1	0.5 units
10+1	1.5 units
9+1	3.0 units

These numbers are not additive. Thus a shift that runs with 10+1 firefighters will generate 1.5 units, not 2 units. Further, for the calculation of shift strength, the shift count shall be the number of firefighters on duty for at least one-half of the shift.

For each unit generated, the City will deposit \$45.00 into the fund.

2. On the first payday following the end of each quarter, the City will distribute the contents of the fund, in equal shares, to all full-duty line firefighters who normally answer alarms, who are on the payroll as of that day. Firefighters on paid or unpaid leave, including those on §207-a leave, during the last full week prior to the distribution shall not be eligible for a share.

3. Full-duty line firefighters who normally answer alarms (again excluding firefighters on leave) shall receive a lump sum retroactive payment of \$100 for each month they were in this status from January 1 to October 1, 2002. Firefighters who were laid off in February 2002 shall not be eligible for this payment.

4. The firefighters who were laid off in February 2002 shall receive the considerations agreed to by the parties and memorialized in Union counsel's March 25, 2002, letter to the City. In addition, these firefighters shall be entitled to *one* of the following options:

- a) A lump-sum payment in the amount of \$100 for each day of unused sick leave as of the date of the layoff. Choosing this option will require that the firefighter forgo retention of sick leave accumulated prior to the layoff and rights to any additional sick leave as provided in (b) below.

- b) Retention of sick leave accumulated prior to the layoff (as provided in the parties' agreement) plus one half-day per month from the time of the layoff until the firefighter is recalled. If the firefighter is not recalled, or if he declines to return after being recalled, all accumulated sick leave will be lost.

The laid-off firefighters will be notified of these options by November 1, 2002, and will be required to respond with a choice by December 1, 2002, on which date entitlement to either option will expire.

5. A two-tier system shall be established for all firefighters hired after October 1, 2002. The compensation package for these firefighters shall vary from that of current firefighters in the following ways:

- a) Their pay will be at the probationary rate during their first year on the job; at Step 1 during their second, third and fourth years; at Step 2 during their fifth, sixth and seventh years; and at Step 3 during their eighth year and thereafter.
- b) They will not receive a longevity step in the fourth year; otherwise longevity remains the same as for current firefighters.
- c) They will not receive the bonus for not using sick leave (under Article VIII, section 5) until they reach step 2.

6. The City shall have the right to issue pagers to firefighters for emergency notification and to use the pagers (in lieu of the telephone) to summon off-duty firefighters to fire scenes. There shall be no extra compensation for using the pagers, and firefighters shall not be entitled to overtime compensation for off-duty calls unless they respond to the page and report in timely fashion. After the page has been sent, the City reserves the right to cancel the page for additional call-ins when a sufficient manpower level has been reached. Those who call in and/or respond after such time will not be entitled to compensation.

7. The City shall not be restricted from entering into mutual aid agreements with volunteer fire companies in surrounding localities. Any such agreements, however, will not affect the operation of the impact compensation system described in items 1 and 2 above. The City may call for assistance pursuant to a mutual aid agreement at any time after it has issued a call for off-duty firefighters through the pagers.

8. The City may implement a flexible work schedule for certain firefighters as follows:

For employees hired after January 1, 2001, up to the four (4) least senior firefighters will not work a standard shift but will work a flexible schedule. These will be full-time personnel and on the payroll for at least 2000 hours per year. Their shifts will be assigned by the Chief or his designee and may be changed by the Chief or his designee to resolve any manpower problems or provide needed manning levels prior to the use of overtime. However, after starting a shift (10 hours on days, 14 hours on nights, or 8 hours on technical services assigned out of the office), these employees would not be subject to a change for the remainder of the shift started. The city shall provide each firefighter assigned to the flexible schedule as much notification of their schedule as possible, but in no event less than 48 hours.

STATE OF NEW YORK } SS:
COUNTY OF ERIE }

I, Howard G. Foster, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my award.

October 3, 2002
(dated)

Howard G Foster
(signature)

Judith A. Bain
JUDITH A. BAIN
NOTARY PUBLIC - STATE OF NEW YORK
NO. 01BA8051856
QUALIFIED IN ERIE COUNTY
MY COMMISSION EXPIRES 12-04-2002

October 4, 2002

To: Howard Foster, Arbitrator

From: Stefan Kundl, Union Panel Member

Re: Interest Arbitration Award

Dear Howard,

After long deliberation and careful consideration, I concur with your award in the above mentioned matter.

Sincerely,

A handwritten signature in black ink that reads "Stefan Kundl". The signature is written in a cursive style with a large initial 'S'.

Stefan Kundl, Union Panel Member

STATE OF NEW YORK : COUNTY OF CHAUTAUQUA

JAMESTOWN PROFESSIONAL FIREFIGHTERS, Local #1772,

-vs-

DISSENT

CITY OF JAMESTOWN, NEW YORK

GENTLEMEN:

I respectfully dissent from this impact arbitration opinion and award. The basis for my dissent is that the opinion is not based upon the evidence submitted at the hearing and the award exceeds the authority of this panel and is not consistent with the evidence presented at the hearing.

I maintain my position that there is no evidence of impact. The safety of firefighters at structure fires is dependent not on the number of personnel present, but on attitude and awareness of safety along with observance of the various working rules and protocols put forth by the department to assure safety. Fewer personnel on the scene admittedly does result in higher losses to property, but it does not impact the safety of firefighters. The Union failed to present any evidence of increased danger or workload on either a regular work shift or at the scene of a fire. In fact, the City presented evidence indicating there has been no increased danger to the firefighters. The City's evidence was uncontested by the Union. The only evidence presented by the Union dealt with increased risk of loss of property to the taxpayers. This award is based on a finding of perceived or "intuitive" impact. The opinion makes no mention of an actual or proven impact in regard to the members of Local 1772. I cannot support an award that is not substantiated by the evidence.

As was recognized by the opinion language, it is the right of the City taxpayers to determine the level of fire protection they deem sufficient for the City of Jamestown. The majority of this panel, neither of whom is a resident of Jamestown, has usurped the authority and rights of the City of Jamestown taxpayers by dictating a level of fire protection the majority deems appropriate.

This award does not specifically address firefighter safety; rather, it establishes a staffing level. A staffing level is a proposal the Union was unable to obtain through contract negotiations and cannot be awarded outside of a contract interest arbitration. By mandating the City of

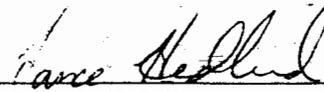
Jamestown to pay money into a pool any time the number of firefighters on a shift falls below a designated number, this arbitration award has effectively established a minimum manning level, which is against public policy, not a mandatory subject of negotiation, and an improper subject for this arbitration panel to consider. The public through their elected officials sets the staffing and budget of the Jamestown Fire Department. Since the public must both pay for the fire service through taxes and bear the risk to property of any decrease in fire service, it is proper for the officials representing the public to mandate the level of fire protection services. By mandating additional money tied to a staffing level, this award has usurped the public's right to determine and set these levels.

It is my position that the Union failed to establish that firefighter safety was negatively impacted during a normal work shift. A normal shift could include such activities as eating, watching television, sleeping, or routine duties of equipment and truck maintenance. In fact, this arbitration award goes far beyond the evidence that was presented at the hearing. This arbitration award essentially gives firefighters a bonus for time spent at the station waiting for the alarm to ring. But, there was no evidence presented by the Union establishing any increased risk or danger while manning the stations. The only evidence that was presented by the Union at the hearing was that there might be an impact at the scene of a fire. Any effort to deal directly with the impact that was claimed (but not proven) by the Union at the hearing was rejected by the majority of this panel.

In addition, this award has no realistic mechanism with which to control the amount of money paid into the pool. The amount of money is controlled by attendance of Union members. If they should call in sick or otherwise fail to come in to work, the City will then be forced to compensate them by paying money into the pool. In fact, the Union membership has the only control over the amount of money that is to be paid into the pool. Union members can be, and most likely will be, compensated for being absent from work. By staying home, the firefighters increase the amount of money put into a pool in which they all will share. Aside from disciplining employees for abuse of paid time off, which will be met by the Union grieving and proceeding to arbitration on each and every case, the employer has no way to address the problem of employees paying themselves more money by absenting themselves from work. The opportunity for abuse is great, and there is no means in this arbitration award for the City of Jamestown to avoid those abusive situations.

Finally, the City of Jamestown, in an attempt to directly address the loss of manpower on the shifts, put forth proposals on the hiring of part-time fire fighters during negotiations and strongly urged a similar proposal during the course of discussions by members of the panel. The City is in financial difficulty and wishes to hire part-time firefighters to enhance staffing levels in the Fire Department. The proposal put forth by the City with respect to part-time firefighters would directly address the loss of manpower on the shifts, the issue which this impact award is allegedly based upon. However, during the course of negotiations, the Union vehemently opposed any discussions with regard to part-time firefighters and the Union's panel member maintained a similar stance during the course of the arbitration panel discussions. The Union's position was that only money paid to existing firefighters or some sort of de facto minimum staffing clause would solve the problem. It had no interest in any proposal seeking to add staff through any non-traditional means. The panel has accepted that reasoning and similarly rejected part-time firefighters even though the proposal I put forth was that part time firefighters would not be hired until the terms and conditions of their employment could be negotiated with the Union membership. Although language in the opinion encourages the parties to negotiate the hiring of part-time firefighters, this language is wishful thinking and clearly unenforceable. Based on past history, the hiring of part-time fire fighters will be summarily rejected by the Union without discussion. Thus the language in the opinion will not affect future negotiations and offers no relief to the City of Jamestown.

Based on the foregoing, I must respectfully dissent from the arbitration award.



LANCE HEDLUND

Sworn to before me this 11th
Day of October 2002.



Notary Public

TO: Howard A. Foster
Stefan Kundl

Marilyn L. Fiore Nieves, #02FI5088644
Notary Public, State of New York
Qualified in Chautauque County
My Commission Expires Nov 24, 2005