

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

N.Y.S. PUBLIC EMPLOYMENT
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CONCILIATION

In the Matter of the Dispute between

CITY OF LACKAWANNA

-and-

LACKAWANNA FIRE DEPARTMENT

BENEVOLENT ASSOCIATION, INC.

AWARD OF ARBITRATION PANEL

Case Number: 1A-105; M78-718

On May 22, 1979, the New York State Public Employment Relations Board appointed the undersigned as members of a Public Arbitration Panel to resolve the dispute between the City of Lackawanna (hereinafter referred to as the city) and the Lackawanna Fire Department Benevolent Association (hereinafter referred to as the union).

On June 22, 1979, a hearing of this case was held in the Lackawanna City Hall. Appearing for the city were Charles J. Ganim, consultant and spokesman, and Robert Marciniak, assistant comptroller. Appearing for the union were James Moran, president, Frank Janca, and John Devic. In accordance with section 209 of the Taylor Law, the parties were given the opportunity to present "orally or in writing, or both, statements of fact, supporting witnesses and other evidence, and argument of their respective positions...." Neither party requested that a verbatim record be kept of the hearing.

Salaries

The union requested a one-year contract providing an increase in salaries of 15 percent, retroactive to January 1, 1979, and also providing that if the cost of living rose during 1979 by more than 15 percent, the employees would receive further increases in step with the increase in consumer prices. The city proposed a two-year contract providing no salary increase in the first year (1979) and 5 percent in the second year (1980).

For the reasons described below, we award the following series of across-the-board salary increases: no increase for the first six months of 1979; an increase of 3 percent effective July 1, 1979; a further increase of 3 percent effective January 1, 1980; and a further increase of 3 percent effective July 1, 1980 through December 31, 1980.

The union based its salary proposal primarily on two arguments: that the work load of its members had increased and that consumer prices are rising rapidly. We did not find the first argument to be very persuasive. It is true that the size of the bargaining unit has been reduced by attrition over the last several years, from 110 firefighters somewhere around 1970 to 82 today, but the union did not present any hard evidence that the effort or risks required of the firefighters employed today are unreasonable by some standard or other. The most concrete example offered in this respect was the claim that the firefighters' duties had significantly increased during the last year because of the decision by the management of the local Bethlehem Steel plant to reduce the size of their company fire department and to rely more extensively on the city's fire department. The city presented evidence, however, that out of 1820 "incidents requiring fire calls" in the city during 1978, only four occurred at the Bethlehem plant during the last half of the year after the city had taken on more responsibility for fire protection in that plant.

There can be no doubt, however, of the validity of the union's claim that its members are suffering from the ravages of inflation today. Consumer prices are currently increasing at an annual rate of more than 10 percent, and economists are nearly unanimous in expecting little if any moderation of inflation during the next few months. In the midst of such price pressures on employees and their families, an arbitration board must have very compelling reasons for awarding increases as low as those ordered in this case. Unfortunately, we found that there are such compelling reasons.

First, it is clear that the City of Lackawanna is in serious financial difficulty. Evidence presented by the city, and not refuted by the union, showed that even if the salaries of all city employees remained the same in 1979 as in 1978, the city would still need to borrow funds this year to meet the increase in its other financial obligations. That bleak financial condition has resulted in spite of a 7 percent increase in property taxes in 1979 and a recent reimbursement of funds to the city from the state that were not included in the city budget adopted in February 1979.

There is disagreement over the reasons for the city's financial distress. The union pointed out, for example, that property taxes in the city were cut about 5 percent last year, and argued that it was no coincidence that 1978 was also an election year. The city argued that its tax policy must reflect to a considerable extent the economic difficulties recently faced by the local Bethlehem Steel plant, since that plant accounts for about two-thirds of all city tax revenues. Whatever the reasons for the city's current financial problems, we are convinced those problems are real and that local taxpayers, as well as city employees, are being called upon to help solve those problems.

A second reason for our salary award lies in the fact that the salaries and fringe benefits of firefighters in Lackawanna compare very favorably with the salaries and benefits of firefighters in surrounding communities. The city presented evidence, without serious challenge by the union, on salaries and benefits

in seven of nine municipalities in the local area that maintain a force of salaried rather than volunteer firefighters. The seven communities included in this comparison are Dunkirk, Jamestown, Lockport, Tonawanda, North Tonawanda, Batavia, and Lackawanna; the two excluded are Buffalo and Niagara Falls, both of which are considerably larger in population than Lackawanna. Among the seven communities compared, the salary of firefighters on the fourth step (where nearly all Lackawanna firefighters are located) is highest in Lackawanna; in fact, the 1978 salary of Lackawanna firefighters is higher than the 1979 salaries of firefighters in the other six communities. Lackawanna also ranks at or near the top among these communities when their firefighters' contracts are compared with respect to dental plans, visual care, vacations, holidays, personal days, sick leave, and health insurance.

It is also relevant that, as might be expected from the comparison of current area salaries, the record of past salary increases for Lackawanna firefighters shows that those increases have been relatively generous. After a year of no increase in 1972, the salary maximum in the Lackawanna fire department was increased in succeeding years by the following rates: 11.5%, 6%, 9%, 8%, 8%, and (in 1978) 10%.

The fact that Lackawanna firefighters have done well in past negotiations, and now rank relatively high in their local area in salary and benefits, would not mean, in ordinary circumstances, that they must be penalized by receiving lower increases than other workers are receiving. But in the extraordinary circumstances of 1979, in which the city is very hard pressed financially, it is relevant that the city has dealt fairly and even generously with this union for several years. That record lends credibility to the city's ^{current} plea of financial distress. Also, although a cut in real wages is always painful to any group of employees, we agree with the city that if wage increases must be restrained in a case such as this, it is somewhat more equitable to ask that sacrifice of employees who rank at the top rather than the bottom of their relevant salary structure.

Finally, it is necessary to comment on the requirement of the Taylor Law, in section 209, that an arbitration panel, in arriving at its decision, shall take into consideration, in addition to the factors discussed above, appropriate comparisons with "private employment" and a comparison of "peculiarities in regard to other trades," such as hazards of employment and physical and educational qualifications. The union in this case did argue, in fact, that the salaries of its members should be compared with the higher salaries received by the firefighters employed directly by the local Bethlehem Steel plant. Although there is some logic to that comparison, we found more persuasive the comparison with other firefighters in the public sector, since the latter comparison involves fewer differences in duties, laws, and economic setting. As for comparing this trade to others with respect to hazards and qualifications, neither party urged us to make such a comparison nor do we think one is necessary in this case.

In summary, our salary award attempts to strike an equitable balance between the conflicting needs of the employees and the employer in this case. Although our award provides for larger salary increases than the city was willing to offer voluntarily and will require the city to borrow ^{more} funds than it had intended, the two-year series of small increases should help the city weather its current financial crisis. On the other hand, although our award falls considerably short of the increases requested by the union, it will provide partial protection to the employees from the costs of inflation by eventually raising salaries 9 percent over their 1978 level.

Overtime Pay

The union proposed that Articles XVI and XXI of the agreement be amended to provide that overtime work will be compensated by "monetary payment at time and one-half, within the following pay period." The city's position was to retain the current language in the agreement, which provides that overtime work shall be

compensated at the straight-time rate of pay.

The city argued in general that it could not afford any additional financial burden this year and, more specifically, the work schedule of the firefighters (one 24-hour period on and two such periods off) would make overtime penalty rates particularly costly. We found the union's arguments on this issue to be more persuasive, however. As the union pointed out, the Police and Public Works Departments in the Lackawanna city government already have such premium pay clauses in their union agreements, and some form of overtime penalty rates is included in the agreements covering firefighters in three of the ^{other} six area communities cited by the city in its salary comparisons. Further, overtime costs in this bargaining unit in 1978 totaled approximately \$28,000, indicating that if overtime experience were the same this year, a 50 percent penalty rate would cost the city about an additional \$15,000 (making some allowance for the salary increase awarded for the last half of 1979). The sum of \$15,000 is not insignificant to the city in view of its current financial problems--in fact, it is about the equivalent of a one percent increase in salaries in this unit--but we believe the change is warranted and that the city can afford this additional cost.

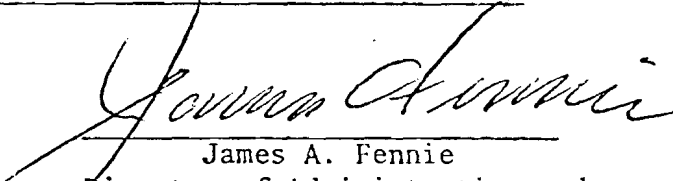
For those reasons, we direct the parties to amend their agreement to provide that overtime work shall be compensated at time and one-half the employee's regular rate of pay, that such payments be made within the pay period following that in which the overtime work was performed, and such payments be made retroactive to January 1, 1979.

Other Issues

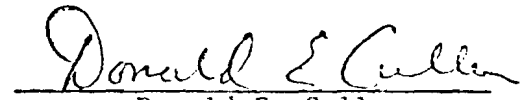
The union requested certain changes in Article III, section 6, of the agreement, and the city proposed that this clause be deleted from the agreement.

During the course of the arbitration hearing, both parties agreed to drop their demands on this issue and to leave unchanged this provision in the agreement.

The union requested certain improvements in the sick leave provision (Article X, section 1), and the city proposed reducing the rate at which sick leave accumulates. The union also requested the initiation of a dental insurance plan and a visual care insurance program; the city opposed both requests. Given the financial problems of the city and the fact that the firefighters in Lackawanna already compare favorably to other firefighters in the area with respect to most fringe benefits, we do not believe further improvements in the fringe benefits of the employees is warranted at this time. On the other hand, we are reluctant to roll back any existing income protection plan, such as the city proposes with respect to the rate of accumulating sick leave days, since the employees are already being required to absorb, in all likelihood, cuts in their real wages. For these reasons, we direct that the status quo be preserved with respect to the fringe benefits discussed in this paragraph; that is, no change shall be made in the existing sick leave plan and the city need not adopt either a dental or visual care insurance plan.



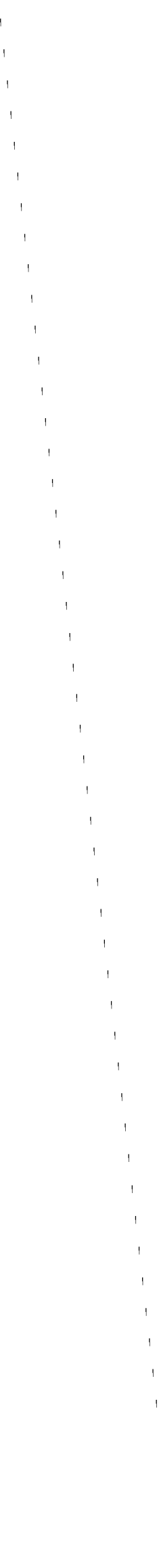
James A. Fennie
Director of Administration and
Finance-City Comptroller,
City of Lackawanna



Donald E. Cullen
Chairman

September 5, 1979

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CONCILIATION
DISSENT

In this era of double digit inflation, for a panel not to award wage increases in a percentage which allows employees to retain some semblance of real purchasing power, the employer, in this case the City of Lackawanna, must bear a heavy burden of showing that its circumstances are such that such increases are not warranted.

The undersigned, as a member of a Public Arbitration Panel to resolve the dispute between the City of Lackawanna and the City's firefighter's union, is not persuaded that the City has met that burden.

Additionally, a disquieting aspect has been the City's procrastination in the negotiating process, to the extent that the hearing in this matter did not take place until nearly six months after the expiration of the contract and nearly one year after the union sought to resolve the differences.

The second aspect is the City's failure to make known to the panel the expectation of a substantial sum of money from the State, which sum has apparently now been paid to the City. Obviously, this money was not a gift and, as an anticipated revenue, it should have been utilized in computing the true economic picture of the City. .

The nature of the firefighters employment is such that they should be given special consideration. The numerous laws of the State and Court decisions interpreting those laws make this a self-evident proposition.

The admitted fact that the City has, by attrition, depleted the ranks of its firefighters 25% in less than a decade, when there was no similar loss in the City's population; the addition of Bethlehem Steel as an area of jurisdiction to be protected; and finally, the ravages of inflation over the past two years, lead this writer to dissent from the majority on the award of wages.

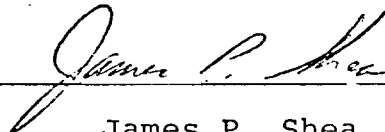
The undersigned would award a 7% salary increase to the firefighters, retroactive to January 1, 1979,

Since this year is two-thirds over, I would grant the firefighters' request that the term of this contract be made one year. In this way, in a relatively short time, it can be demonstrated, one way or other, the City's true financial situation. If the economic picture for 1979 is truly dire, then the City would have a powerful argument at the next bargaining sessions. If not, the firefighters would not be unduly penalized

by the real depletion of their real earnings over a two-year period in the probable occurrence of the continuing high inflation rate.

In the area of Overtime Pay, I am in agreement with the majority's award, to wit, that overtime work shall be compensated at time and one-half the employee's regular rate of pay, that such payment be made within the pay period following that in which the overtime work was performed, and that such payments be made retroactive to January 1, 1979.

We are also in agreement that the status quo be preserved to the other fringe benefits, more specifically, the existing sick leave plan.



James P. Shea
Attorney at Law

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