

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of the Compulsory	X
Interest Arbitration Between:	X
	X
CITY OF NEWBURGH	X
	X
-and-	X
	X
LOCAL 589, INTERNATIONAL	X
ASSOCIATION OF FIREFIGHTERS	X
	X
-----X	

OPINION OF THE  
CHAIRMAN

CASE NO. CA-0115; M 75- 971

MEMBERS OF THE PUBLIC ARBITRATION PANEL:

JOEL M. DOUGLAS, CHAIRMAN

JAMES TAYLOR, EMPLOYER MEMBER

JOHN PREZEKOP, EMPLOYEE MEMBER

APPEARANCES:

For the City - John M. Donoghue, Esq.

For the Union - Thomas P. Flynn

PRELIMINARY STATEMENT:

This is a proceeding pursuant to Section 209.4 of Article 14 of the New York State Civil Service Law. Under the authority vested in the New York State Public Employment Relations Board, the above named Public Arbitration Panel was designated for the purpose of "making a just and reasonable determination" in the above cited impasse.

Meetings were held in the City of Newburgh during

which time the parties were afforded full opportunity to present oral and written evidence, cross examine witnesses and present briefs. At the conclusion of these hearings the Panel met in a series of executive sessions.

This Opinion represents the view of the undersigned Chairman and does not necessarily reflect the view of either of the other Panel members.

At the outset of the hearings the parties expressed a joint request to extend the Arbitration Award to a period of not less than three years. The previous Collective Bargaining Agreement, CBA, between the parties had expired on December 31, 1975--thus the parties were a year plus into a period in which no successor agreement had been reached. The parties, in accordance with Section 7501 of the Civil Practice Law and Rules, of the State of New York, entered into a signed stipulation whereby the Arbitration Panel ....

"...shall be and hereby is empowered to issue an arbitration decision establishing wages and terms and conditions of employment for the fiscal years 1976, 1977 and 1978... (see attachment p 2a.)....

In accordance with the impasse provisions of the Taylor Law, a fact finder had been assigned to this impasse and issued his report and recommendations. Neither side accepted his report in total. Those findings of the fact finder have been considered by this Panel in its determinations and study of this matter.

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of the Arbitration between

CITY OF NEWBURGH

and

LOCAL 589 INTERNATIONAL ASSOCIATION OF  
FIRE FIGHTERS.

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STIPULATION

IT IS AGREED by and between the City Manager, City of Newburgh, and Local 589 International Association of Fire Fighters that pursuant to the provisions of Section 209.4 of the Civil Service Law, which provides for binding arbitration in disputes between municipalities and police and fire units, and Section 7501 of the Civil Practice Law and Rules, which provides for the enforceability of arbitration agreements without regard to the nature of the controversy, that:

PROFESSOR JOEL M. DOUGLAS, Arbitrator in the impasse dispute between Local 589 International Association of Fire Fighters and the City of Newburgh shall be and hereby is empowered to issue an arbitration decision establishing wages and terms and conditions of employment for the fiscal years 1976, 1977 and 1978.

DATED:



JAMES R. TAYLOR  
CITY MANAGER, CITY OF NEWBURGH



ARTHUR WILCOX  
PRESIDENT, LOCAL 589 INTERNATIONAL  
ASSOCIATION OF FIRE FIGHTERS

This Panel has carefully studied and analyzed the criteria for interest Arbitration as spelled out in the Taylor Law under Section 209. These criteria included the following:

- a. comparasion of 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 similiar services.....
- b. the interests and the 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. such other factors which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment.

BACKGROUND:

Newburgh is located in the County Of Orange, north of the City of New York in the Hudson River Valley. Its 1970 population was 26,219. The City has experienced a time of economic difficulty as many large industrial and manufacturing plants have left the City for a variety of reasons.

While its tax base has declined, the need for services has not. Newburgh has been faced with increasing costs for social services, education and police and fire support services.

While this period of economic decline has remained, the surrounding Town of Newburgh has experienced a growth factor in terms of population and tax base.

The parties brought to the Arbitration Panel some twenty-five items for their determination. During the course of the presentation, several of these items were either withdrawn or resolved by the parties, thus what remains is a finding tied to the following:

AWARD ITEMS:

A. Duration of Agreement;

Based on the signed stipulation between the parties, the panel finds that the CBA should be for a period of three years---January 1, 1976 - December 31, 1978.

B. Hours of Duty :

Continuance of present Article V as is. It is the finding of the panel that the present language affords the City the flexibility that it seeks in this area. It is further recommended that this Article be read in conjunction with the newly created Managements Rights Clause.

C. Managements Rights Clause:

It is recommended that the following clause be added to the present Agreement:

It is recognized that the management of the department, the control of its properties and the maintenance of order and efficiency are solely the responsibilities of the City. Accordingly, the City retains all rights, except as they may be specifically modified in this Agreement, including, but not limited to selection and direction of the work forces, to hire, suspend or discharge for cause; to make reasonable and binding rules which shall not be inconsistent with this Agreement; to assign, promote or transfer; to determine the amount of overtime to be worked; to relieve employees from duty because of lack of work or for other legitimate reasons; to decide on the number and location of facilities, stations, etc; to determine the work to be performed, amount of supervision necessary, equipment, methods, schedules, together with the selection, procurement, designing, engineering and the control of equipment and materials; and to purchase services of others, by contract or otherwise except as they may be otherwise specifically limited in this Agreement and to make reasonable and binding rules which shall not be inconsistent with this Agreement.

D. Educational Benefits:

Change the existing CBA to read as follows:

- 1) Article 12-paragraph one: add word SCHOOL in front of "fees" to read SCHOOL FEES ( see page 5- CBA)
- 2) Article 12- paragraph two : add word COLLEGE in front of "fees" to read COLLEGE FEES (see page 5 -CBA)

E. Manpower:

Delete Article 6, Manpower, from present CBA based on PERB decision in Newburgh matter....

F. Productivity:

The Panel recommends the inclusion of the following clause:

"...The Union and the City recognize the need for increased productivity with regard to the City of Newburgh Fire Fighters and Fire Department and hereby agree to jointly work together to effectuate increased productivity.

Among the areas discussed, but not limited to are :

- 1) EMT Training Program.
- 2) Inspections.

The parties hereby agree that said training, if required by the City, will be done during the regularly scheduled tour, or if done at any other time, shall be compensated for.

G. Hospitalization:

The Panel recommended no change from the existing CBA.

H. Severance Pay:

Change Article 15 of existing CBA to read :

See Section B (2) p.6.

....A retiree shall file notice of intention to retire with the Chief of the Department before July 1, of the year previous to retirement, and said retiree shall receive said payment in addition to the salary stated in the salary schedule as part of his yearly salary.

I. Vacation Schedule:

The Panel recommended no change from the existing CBA.

J. Life Insurance:

The Panel recommended the following changes in life insurance.

Effective July 1, 1977 the coverage shall be increased to \$7,000 per employee.

Effective January 1, 1978 the coverage shall be increased to \$10,000 per man.

K. Grievance Procedure:

Change grievance and arbitration procedure to read as follows:

....If any employee or a group of employees shall have a grievance or complaint, an earnest effort shall be made to settle the grievance promptly

Grievance Procedure Continued--

through the following procedures:

- Step 1. Any grievance or complaint shall be presented directly to the Chief of the Department within ten (10) days of the occurrence giving rise to the Grievance with a reply to be given within 48 hours. Failure to reply shall constitute a denial.
- Step 2. If no settlement is reached in Step 1, within 72 hours, the grievance shall be presented in writing to the City Manager who within the next 72 hours will conduct a meeting with the aggrieved(s), his representative(s) and such other parties as may be involved. He will render a decision verbally to be confirmed in writing within 72 hours after the meeting.
- Step 3. If the grievance is unresolved to the satisfaction of the aggrieved, it shall be taken to binding arbitration. The decision of the arbitrator shall be final and binding on both parties. Any expenses incidental to arbitration shall be borne equally by both parties.

The Arbitrator will be selected from a mutually developed list of seven names.

L. Holidays:

The Panel recommends no changes in holidays from the existing CBA.

M. Leave:

The Panel recommends no changes in leaves from the existing CBA.

N. Association Release Time:

Change in existing Article to read as follows:

.....A The president and / or a designated Association representative of Local 589, I.A.F.F. shall be allowed up to fifteen days per year between them from their usual work schedules for attendance at I.A.F.F. Conventions, District meetings, State meetings, Legislative Conferences at which subjects pertinent to the Fire Department are on the agenda, without loss of pay or benefits.

No changes in sections B or C.

O. Parity:

The Panel recommends the deletion of the Parity Article from the CBA in accordance with recent PERB rulings.

Q. Duration:

The Panel recommends the insertion of the following:

A. It is agreed to by and between the parties that all negotiable items have been discussed during the negotiations leading to this Agreement and agree that negotiations shall not be reopened.

B. This contract shall take effect January 1, 1976 and shall terminate December 31, 1978.

R. Safety Committee:

The Panel recommends the insertion of the following:

A. Any safety issues may be submitted to a Safety

Safety Committee Continued:

Committee consisting of two members chosen by the Union and two members chosen by the City Manager. Any safety issues not agreed upon by the Committee shall be submitted to the City Council.

T. Salary :

With respect to the economic provisions of this Award, the Arbitration Panel carefully took into consideration the requirements of law set forth in Section 209 of the Taylor Law. The parties were instructed that the standards set forth in the legislation were to be followed and that the evidence and data submitted must be of the quantum necessary to sustain their respective positions.

The Panel was cognizant of the specifics of the interest Arbitration standards set forth in the Law and based their Award upon those guidelines. Upon conclusion of the hearings the Panel requested that additional briefs be filed by the parties that specifically spoke to the questions of public interest, ability to pay and comparison of the job as relates to wages, hours and conditions of employment. In addition the Panel sought information on prevailing practices and the role of the public interest.

The report of the Fact-Finder was studied by the Panel inasmuch as it related to the items before them. The Panel accepted the findings of the fact finder as it pertained to the wage stabilization period of one year as requested by the City, (note dissent by the employee member).

The City contended that it could not afford any wage hike for year one of the Agreement and desperately needed this type of relief in order to gain a period of stability in terms of the budgetary process. The City further submitted that while it appreciated the financial needs of the Fire Fighters in terms of a raise for the second and third year of the Agreement it could not offer the amount that the Union was seeking.

The City argued that the budget for 1976 left no room for raises, since none had been budgeted and indeed was at the maximum constitutional tax limit. The only option that was open to the City for the year 1976 was either one of three:

- 1) wage stabilization
- 2) reduction in personnel
- 3) reduction in services provided.

The City argued that the only viable option was indeed the wage stabilization route.

The City further contends that with respect to comparisons with other fire districts and cities in this group, they were consistent with wages and benefits offered and enjoyed. While they do not claim leadership, they submit that they are in the comparative norm range.

The Union contends that the position taken by the City of Newburgh with respect to the 1976 economic budget is not as bleak as pictured and did not constitute sufficient reason to impose a unilateral wage stabilization period. Additional sources of revenue were open to the City that they opted not to tap for fear of political ramifications. This argument by the Union is based in part on the decision by the City not to impose a one percent sales tax in the year 1976 which if imposed, would have generated additional sources of revenue.

The Union further submits that based on the comparative data submitted, the Newburgh Fire Fighter was falling far behind his counterparts in the region.

With respect to the tax limits set to property taxes in cities, the Union acknowledges that for the year 1976 the City was at 100% of its legal limit. However, for the year 1977 the City had a tax margin of \$415,229 available to it which it did not choose to exercise. The City explained this margin by stating that it did not want to make the tax rate unmanageable and further drive away its eroding tax base.

The 1977 budget adopted by the City Council provided for a one percent sales tax. This new revenue tax was projected at generating \$600,000 for the 1977 budget year. With this amount budgeted the City did place funds in the salary accounts to cover raises for this unit. Two months into 1977, and during the time that the Arbitration Panel was conducting its hearings, the Council voted the removal of this tax, thus creating a budget gap.

The placement of this item into the 1977 budget was not done in a frivolous manner. The sales tax was adopted only after careful study and planning with respect to the economic and political consequences. The removal of this line which was projected at \$600,000 in new revenues was done in such a way as to not be persuasive to the Chairman of this Panel . Recognizing the fact that the City Council has the final say in this matter, the Panel could not and did not base its Award in years two and three on this fact... It is only sufficient to say that of all the words that the poets use, the saddest of all are "...what might have been."

It has been a year and one half since the Fire Fighters received a raise in Newburgh. One need not be an economist to understand the rates of inflation in both the CPI and WPI that we have experienced during that time period. The fact remains that these employees are entitled to a raise and that the City, if it wishes to maintain this service, must have the ability and desire to fund it at the level that is required. To ask the employees in the unit to accept a one year wage stabilization period was persuasive to the Chairman of this Panel. To continue said freeze beyond the one year period is not acceptable.

The Arbitrator Panel was unable to agree on an unanimous Award with respect to the economic package. The Union argued that it ought be more while the City defended its earlier positions. However, based on the record submitted and

after a careful economic analysis of the ability to pay and the public interest issue, along with the comparative norm criteria specified awards the following:

A. The following schedule of salaries shall be effective January 1, 1977:

1) Existing salary schedule plus six percent on each and every step retroactive to Jan. 1, 1977.

B. The following salary schedule shall be effective January 1, 1978:

2) 1977 salary schedule as awarded plus six percent on each and every step.

C. No change in existing salary schedule effective January 1, 1976 through December 31, 1976.

D. No change in longevity payments.

E. No change in fringe package unless previously cited.

CONCLUSION:

This Award is based on the findings of the Chairman and the employee Panel Member with respect to the economic and fringe portions. The employer Panel Member has elected to file a dissenting opinion on the economic portions of this Award. The City further argued that in order to fund any Award for 1977 it could only do so by layoffs or a reduction in services. This

is not the decision of the Arbitration Panel to make but indeed must be resolved between the parties . Layoffs might indeed take place, but "social engineering" is not the job of the Arbitrator under this statute.

For the Arbitration Panel:

Joel M Douglas  
Joel M. Douglas, Ph.D.  
Chairman  
May 9, 1977

Joel M Douglas 6/2/77

John Prezekop  
John Prezekop  
Employee Member

Dissenting in Part,  
Economic and Fringe Package  
B. Hours of Duty

//// unsigned/////

James R. Taylor  
Employer Member

unsigned  
Joel M Douglas  
6/2/77

State of New York  
County of Westchester                      SS

On this second day of June, 1977, before me personally came and appeared JOEL M. DOUGLAS, to me known and known to me to be the individual described herein and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

John B. Mancuso    7689185    exp 3/30/78

*John B. Mancuso*

*Joel M Douglas    6/2/77*