

State of New York Public Employment Relations Board

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In the Matter of Interest Arbitration :  
Betwen :  
CITY OF TONAWANDA : Before  
And : PUBLIC ARBITRATION PANAL  
LOCAL 859 : Herbert L. Marx, Jr.  
UNIFORMED PROFESSIONAL FIREFIGHTERS' : Public Panel Member and  
ASSOCIATION, AFL\_CIO, IAFF : Chairman  
PERB Case No. IA-6 : Jacob A. Palillo  
Employee Organization  
----- x Panel Member  
Roger D. Leaderstoff  
Employer Panel Member

November 17, 1977

APPEARANCES

For the City:

George X. Saltarelli  
Chairman, Negotiations  
Committe

Delbert E. McMaster  
Council President

For the Union:

Bernard E. Stack, Esq.

Gary A. Gath  
President



O P I N I O N

This matter was heard and resolved as directed by the State of New York Public Employment Relations Board under the terms of statutory provisions applicable to compulsory interest arbitration pursuant to Civil Service Law, Section 209.4, as amended July 1, 1977. At issue are certain terms of a new collective bargaining agreement to be effective as of April 1, 1977, between the City of Tonawanda, New York (the "City") and Local 859, Uniformed Professional Firefighters' Association, AFL-CIO, International Association of Fire Fighters (the "Union").

Under required procedure, a three-person public arbitration panel (the "Arbitrators") was designated to hear the dispute and render an award. After due notice, a hearing was held on October 19, 1977, at the Tonawanda City Hall. Representatives of the parties waived the right to a stenographic record of the proceedings, and they also waived post-hearing briefs. Evidence and argument were presented to the Arbitrators, following which the Arbitrators declared the hearing closed. The Arbitrators met in executive session immediately thereafter.

Prior to this arbitration proceeding, Recommendations of Fact Finding had been presented to the parties on April 18, 1977 concerning all items then in dispute. These recommendations were introduced to the Arbitrators as Joint Exhibit #1.

The parties agreed that the sole issues remaining in dispute subsequent to the Fact-Finder's report are the following:

1. Longevity Pay
2. Uniform Allowance
3. Work and Vacation Schedule

In addition to and as part of arguments by the parties, the Arbitrators gave due consideration to the following factors, as they may be applicable, in reaching their determinations:

a. Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours, and conditions of employment of other employees performing similar service or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities.

b. The interests and welfare of the public and the financial ability of the public employer to pay.

c. Comparison of peculiarities in regard to other trades or professions, including specifically, (1) hazards of employment; (2) physical qualifications; (3) educational qualifications; (4) mental qualifications; (5) job training and skills.

d. The terms of collective agreements negotiated between the parties in the past providing for compensation and fringe benefits, including, but not limited to, the provisions for salary, insurance and retirement benefits, medical and hospitalization benefits, paid time off and job security.

#### I. LONGEVITY PAY

The 1976-77 collective bargaining agreement includes longevity pay in lump sum annual payments as follows:

Five years	\$200
Ten years	\$400

To these provisions, the Union seeks to add longevity pay steps as follows:

Fifteen years	\$ 500
Twenty years	\$ 600

The City's response was a proposal to terminate all longevity payments.

Testimony showed that the City has already granted additional longevity pay at 15 and 20 years of \$500 and \$600, respectively, in recently completed bargaining with its policemen. This is heavily persuasive toward the Union's position.

As to comparison in longevity pay with firefighters in five nearby communities, evidence (Union Exhibit #2) shows maximum longevity pay of \$400 (one community), \$500 (two), \$750 (one), and \$1,200 (one). In addition two other communities provide "\$50 per year after three years" -- although no further explanation of this formula was provided.

With these comparisons, the proposal made by the Union does not seem unreasonable.

The annual cost of the proposed new longevity steps is \$2,700 for the 18 firefighters who would be eligible among the 30 firefighters in the unit.

The Fact Finding report recommended the addition of the two steps.

All these considerations lead the Arbitrators to find in favor of the Union's proposal.

## II. UNIFORM ALLOWANCE

The previous agreement provided a \$200 uniform allowance for "mandated clothing" for newly hired firefighters. The parties have no dispute concerning this provision.

For firefighters with more than one year of service, the previous agreement provided a \$100 annual allowance. The Union proposes that this

be increased to \$200, based on the rise in costs of required uniforms. The City proposes that the allowance remain unchanged, pointing to a 100 per cent increase in the allowance from \$50 to \$100 in 1974. The Fact Finding report recommended a change to \$150.

In Union Exhibit #2, the Union provided the Arbitrators with comparative costs of uniform items in 1974 and at present. Calculations show, where direct comparisons can be made, that costs have risen 11 per cent in the past three years. The Arbitrators therefore will award a uniform allowance of \$120, taking into account some projected rise in cost over the next two years.

### III. WORK AND VACATION SCHEDULES

The City proposes to reduce time off for vacations, as detailed below or, in the alternative, rescheduling of firefighters to an eight-hour work day schedule. At the outset, the Arbitrators reject the alternative of changing to an eight-hour day as being disruptive of the present mutually satisfactory schedule (except as to its effect on vacation time).

As a threshold consideration, work schedules for firefighters do not follow a weekly (that is, seven-day) pattern, as is the case for most other employees.

For an employee on a weekly schedule, there is no problem in determining the content of a "week's" vacation. Assuming the week begins on a Monday, the vacation covers five working days (Monday through Friday) and the unscheduled remainder of the week (Saturday and Sunday). As an aside, the Arbitrators do not find, as the City would argue, that the vacation includes the preceding Saturday and Sunday; these two days are part of the preceding work week.

Firefighters, on the other hand, work a schedule irrespective of the seven-day week. They work in three-day tours of alternating 10 and 14 hours (average 12 hours), with intervening rest days of two or four days (average three days), with one extra rest day in December. Thus, they are off duty for 50 per cent of all days, with an average tour of duty of 36 hours. Put another way, an average tour and succeeding rest period is six days. Put another way, in an average calendar week, firefighters work a tour of 3½ days, or 42 hours, with compensating time off being given for the two hours above 40.

Thus, vacation in terms of "weeks" must logically be somewhat different for firefighters than for employees on a Monday-to-Friday schedule.

The City's proposal is to equate "one week" of vacation with one tour of duty. Likewise, "two weeks" of vacation would involve two successive tours off. This would be improperly severe, since in actuality two tours of duty and the ensuing rest periods is 12 days, compared with other employees who receive 14 days off for two weeks' vacation beginning with a Monday.

The Union, on the other hand, proposes no change in the vacation allowance which, in the 1976-77 agreement, provides for three tours off for two weeks' vacation. This schedule obviously gives more than the equivalent of two calendar weeks off.

At this point, however, the bargaining history is of importance. From 1972 through 1974, two weeks' vacation was calculated as "eight working days," or two tours plus two days. Subsequent to this, firefighters were permitted to take the third day of the third tour as part of their compensating time off.

Then in 1975 or 1976 (the testimony is not clear as to which), the City and the Union agreed -- clearly and unequivocally -- to equate two weeks' vacation to three tours. Absent any other explanation, it can be reasonably assumed that this improvement was part of a bargaining "package" and that the gain of this additional benefit offset some other unachieved Union proposal.

Now the City wishes to reduce the vacation benefit previously agreed upon. This is an understandable and reasonable objective -- in the framework of total bargaining. But the Arbitrators are foreclosed from dealing with this "take away" in the framework of, for instance, the amount of a salary increase or some other new benefit. If the City, for the sake of efficient operations, wishes to reduce vacation time off, the only effective way to do so is through bargaining as part of an overall proposal in some future agreement.

Standing by itself, however, the City's vacation proposal seems unwarranted. The Fact Finding report reached a similar conclusion.

Based on all the evidence and argument, as well as the statutory criteria, the Arbitratorstherefore make the following

A W A R D

In the 1977-79 agreement between the City and the Union:

1. There shall be an addition to the longevity provision to include payments of \$500 at 15 years and \$600 at 20 years.
2. Firefighters with more than one year of service shall receive one hundred twenty dollars (\$120) per year allowance for mandated clothing.
3. The present work and vacation schedule shall remain in effect.

*Herbert L. Marx, Jr.*

Herbert L. Marx, Jr.  
Public Panel Member and Chairman

STATE OF NEW YORK )  
COUNTY OF NEW YORK ) ss:

On this 17<sup>th</sup> day of November 1977, before me personally came and appeared Herbert L. Marx, Jr., to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

*Wendy S. Marx*  
Wendy S. Marx  
Notary Public, State of New York  
Appointed in Niagara County  
My commission expires March 30, 1979

*Jacob A. Palillo*

Jacob A. Palillo  
Employee Organization Panel Member

STATE OF NEW YORK )  
COUNTY OF Niagara ) ss:

On this 14<sup>th</sup> day of November 1977, before me personally came and appeared Jacob A. Palillo, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

BERNARD E. STACK Reg. No. 2872  
Notary Public, State of New York  
Appointed in Niagara County  
My commission expires March 30, 1977

*Bernard E. Stack*

*I dissent 11-15-77*

*Roger D. Leaderstoff*

Roger D. Leaderstoff  
Employer Panel Member

STATE OF NEW YORK )  
COUNTY OF ERIC ) ss:

On this 15 day of November 1977, before me personally came and appeared Roger D. Leaderstoff, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

DELBERT E. McMAHON  
NOTARY PUBLIC, STATE OF NEW YORK  
QUALIFIED IN ERIC COUNTY  
JULY 1976 - 1979

*Delbert E. McMahon*