

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

STATE PUBLIC EMPLOYMENT
RELATIONS BOARD
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In the Matter of the Interest Arbitration Between
THE CITY OF ALBANY,

Employer,

- and -

ALBANY PERMANENT PROFESSIONAL FIREFIGHTERS
ASSOCIATION, LOCALS 2007 and 2007-a,
INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, AFL-CIO,
Union.

CONCILIATION

PERB CASE
NOS.
IA-28/M77-638

OPINION
AND
AWARD

Before the Public Arbitration Panel:

John E. Sands, Public Member and Chairman
Robert G. Lyman, Employer Member
Jack Przekop, Employee Organization Member

OPINION

On February 16, 1978 Harold R. Newman, chairman of the New York State Public Employment Relations Board, appointed us as the public arbitration panel under Section 209.4 of the Civil Service Law to make ". . . a just and reasonable determination of the matters in dispute . . ." between the above parties. In accord with our authority under that law, we conducted formal hearings on April 18, 19 and 20, 1978 and met in executive session on April 24 and May 10, 1978 in Albany, New York. At the formal hearings representatives of both parties appeared and had full and equal opportunity to present testimony

under oath, documentary exhibits and argument in support of their respective positions; and each cross-examined the other's witnesses. In addition, both parties submitted pre- and post-hearing memoranda. Neither party objected to the fairness of the proceeding, nor did either seek leave to submit additional evidence to us.

We have carefully considered the entire record before us in light of the following standards prescribed by Section 209.4 (c) (v) for resolution of this dispute:

- a. comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours, and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities.
- b. the interests and welfare of the public and the financial ability of the public employer to pay;
- c. comparison of peculiarities in regard to other trades or professions, including specifically, (1) hazards of employment; (2) physical qualifications; (3) educational qualifications; (4) mental qualifications; (5) job training and skills;
- d. the terms of collective agreements negotiated between the parties in the past providing for compensation and fringe benefits, including, but not limited to, the provisions for salary, insurance and retirement benefits, medical and hospitalization benefits, paid time off and job security.

On the basis of that consideration, we have reached the following conclusions. In doing so, we recognize that the specific elements of our award comprise concessions which flow in each direction to both parties and which reflect what might well have been the outcome had the parties themselves concluded these negotiations without our intervention.

Standards

(a) Comparability

Comparability is the first factor to be used in determining firefighter salary impasses. Comparability studies do not yield a single, "just" wage rate for each job. Rather, they determine the outer limits of a range within which appropriate levels of compensation should be found. The parties have advanced substantial data showing firefighter compensation and workload in other cities and the relationship of Albany firefighter compensation to that of public and private sector wage earners in the area.

Taking all those factors together, we find that Albany firefighter compensation levels are generally within the range experienced for similar employment in similar cities in New York State. We therefore conclude that there is neither a substantial

catch-up nor retardation of salary levels necessary to align compensation for Albany firefighters with that of comparable cities.

(b) Interests and Welfare of Public and Financial Ability of the Public Employer to Pay

The parties are as one in their joint convictions that the City of Albany has one of the finest professional firefighting services in the State of New York and that the public welfare demands maintenance of that high standard as well as of the integrity of the City's fisc. They differ, of course, in their views of the City's ability to pay the substantial increases which the union seeks.

We have carefully reviewed the parties' voluminous exhibits and appreciate the merits of each side's points with respect to (1) the effect and valuation of relatively large amounts of tax-exempt property which must be protected notwithstanding that the City receives limited compensation for that protection; (2) the various sources of substantial state and federal aid which are admittedly subject to annual fluctuations depending on legislative discretion ; (3) existing and projected levels of burden on Albany's taxpayers relative to their ability to pay as compared

to similar measures for taxpayers in comparable cities, which levels, although not capable of precise measurement, have seemed to remain within fairly stable, acceptable limits; and (4) the City's recent budgetary experience and effective financial management which have enabled it to run surpluses of revenues over expenditures, to retire substantial debt notwithstanding increased costs of providing essential services, and to remain within the constitutional limits on its taxing and bonding authority.

"Ability-to-pay" as a Section 209 standard means that inability to pay will reduce an otherwise justified increase but not that ability to pay requires an increase beyond what is justified by other substantive factors. It suffices to say on the record before us that we find City of Albany financially able to pay the "just and reasonable" increases required by this award and that the public interest and welfare will not suffer by reason of the changes which we have required.

(c) Peculiarities of Firefighting in Albany

Firefighting is an essentially hazardous profession, and firefighters, as a class, receive general levels of compensation which account for the unusual risks they routinely undertake.

We recognize the unusual possibilities for extraordinary fires in Albany --grain elevators, ships, high-rise apartments and office buildings, construction tunnels, old tenements, and the like. We note as well that the thankfully low incidence of serious injury or unusual fire experience reflects the competence of Albany's firefighters and the effectiveness of their fire prevention programs. Here too nothing in the record requires a substantial alteration of compensation levels.

(d) Terms of Past Collective Bargaining Agreements

The parties' expired contract resulted from a hotly-contested public arbitration panel award issued pursuant to pre-1977 standards of Section 209.4. As a result, those terms are somewhat limited in scope and fail to incorporate existing practices with respect to implementation of benefits which both parties agree can appear in the parties' agreement without negative impact on the interests of either. We have so awarded below.

AWARDS

Issue: Holidays

Article II of the parties' expired contract provides

eleven holidays, paid in a lump sum to every covered employee whether or not the rotation of his duty chart requires that he actually work on any of those days. This benefit level equals or exceeds those of all but one large city in the State. In addition, increased holiday pay is a cost item which, if granted, would require a balancing reduction elsewhere in the economic package imposed by this award. Since nothing in the record supports any increase in the number of paid holidays, we

AWARD

There shall be no change in Article II of the parties' collective bargaining agreement dated June 15, 1977.

Issue: Vacations

Article X of the parties' expired contract deals in a limited way with apportionment and accrual of vacations. It specifies nothing with respect to vacation entitlement or implementation of existing benefits. First, we agree with the union and accept Chief Fitzmaurice's frank concession that current Department practice with respect to vacations can and should be incorporated in the parties' agreement without dis-

advantage to the employer. In addition, that inclusion will provide beneficial stability to the parties' relationship by defining substantive entitlements and providing contractual procedures for their enforcement.

Second, existing practice postpones until completion of five years' service an employee's moving from sixteen to twenty-one calendar days' vacation. Again we agree with the union and Chief Fitzmaurice that entitlement to full vacation benefits should coincide with a firefighter's achieving top grade pay status after three years.

Finally, we find that, at the very highest levels of seniority and authority, a modest increase in vacation entitlement is appropriate to recognize and compensate these employees' long service to the City. Since the employer does not hire additional firefighters nor assign others on overtime to cover unit members on vacation, this increase represents no cost factor.

We therefore

AWARD

Article X of the parties' collective bargaining agreement dated June 15, 1977 shall be amended to add these paragraphs

following existing paragraph B:

(C) Vacations shall be picked by rank, by departmental seniority in each company on each platoon. In the event of transfer, the subject employee shall have a new pick from the vacation periods still unpicked on his new platoon and company. Requests for change of vacation selection shall be granted if (a) there is no conflict with an existing pick at that platoon and company and (b) there is no interference with operations of the Department.

(D) Kelly Days - If, because of transfer, the Chief assigns a new Kelly Day which conflicts with that employee's vacation, he shall get an extra day off.

(E) In computing vacation entitlement, fifteen or more days' service in one month shall be deemed a full month's service. No credit shall be granted for less than fifteen days' service in one month.

(F) The employer will compensate an employee at separation from service for unused vacation leave provided that the employee gives a least five calendar days' written notice of termination.

(G) Leaves of absence without pay or a resignation followed by reinstatement or reemployment in City service within one year shall not constitute an interruption of service for computing vacation entitlement, provided that subject employees shall not accrue vacation entitlement during the period of such leave or separation.

(H) Employees shall accrue entitlement to vacation at the following rates:

Length of Service

Vacation Entitlement

Less than 12 months

1-1/3 calendar days per month, to be taken in the calendar year following that in which employment begins.

Less than 3 years	16 calendar days per year
More than 3 but less than 20 years	21 calendar days per year
20 years and more	25 calendar days per year

(I) All Battalion Chiefs shall accrue vacation entitlement at the rate of thirty calendar days per year.

Issue: Dental Plan

The union has demanded that the current dental plan, provided in Article XV of the parties' expired agreement, be upgraded to include full coverage for orthodontia. We find that Albany's firefighters enjoy generous dental benefits both in comparison to those in other large-city fire departments within New York State and to other employees of the City of Albany. The union has failed to show any convincing reason to improve this costly benefit, and we therefore

AWARD

There shall be no change in the Dental Plan required by Article XV of the parties' collective bargaining agreement dated June 15, 1977.

Issue: Leave of Absence for Union Representatives

Article XVI of the parties' expired agreement provides for paid leave for a maximum of four persons for negotiations with the City and up to two days' leave for the union's president for meetings or conferences. We find that employees and management alike benefit from union activities that tend to enhance communications between the parties or to identify and resolve small issues before they become major ones. The following award extends that released time concept in a limited way to labor-management committee meetings and to regular and special union meetings.

We therefore

AWARD

Article XVI of the parties' collective bargaining agreement dated June 15, 1977 should be amended to add these paragraphs, following Section B:

Section C. Labor Management Committee

Up to two unit members on duty will be released from duty

without loss of pay to attend such meetings of the labor-management committee as may be called. This section does not guarantee paid leave to any unit member; it does require that persons on duty will be assigned to attend the labor-management committee meeting.

Section D. Union Meetings

For purposes of regular and special union meetings, there shall be a block of 120 hours per year of released time available for union officers to be released from duty for periods not to exceed four hours per officer in any twenty-four hour period to attend and conduct union meetings. The President of the union shall advise the Chief in writing of the individual to be so released not less than forty-eight hours before the start of the tour of duty in question. The benefit of this paragraph shall be limited to no more than one union officer per tour of duty.

Issue: Pensions

We recognize that the pension program provided by Section 375 of the Retirement and Social Security Law to Albany's fire-fighters is among the least generous of the options currently available. It is clear, however, that conversion to the Section 384 plan demanded by the union is a costly benefit which would severely restrict the money available to fund competing priorities in the wage package. In addition, we note the parties' sharp

disagreement concerning the status of this demand as a mandatory subject of bargaining. The divisive litigation which would surely follow an award of that benefit would unnecessarily postpone both the effective date of this award as well as its stabilizing benefits.

We therefore

AWARD

There shall be no change in the pension program provided for unit employees.

Issue: Agency Shop

We recognize that the union is required by law to provide representation services to all unit employees equally and without discrimination based on union membership status. That potential liability provides strong reason to require all beneficiaries of that service to contribute their fair share of the costs of representation. We do note, however, the employer's strong philosophical objection to the concept of agency shop.

In this case, all but seven unit employees are union members. The actual impact of providing agency shop is therefore minimal in financial terms but significant in its positive effect on unit morale. We have therefore decided to provide for agency shop to the extent permitted by Civil Service Law Section 208.3(b).

We therefore

AWARD

Article I of the parties collective bargaining agreement dated June 15, 1977 shall be amended to add this paragraph following Section B:

Section C. Agency Shop

The Association shall be entitled to have deductions from the wage or salary of employees described in Section A of this Article I who are not members of the Association the amount equivalent to the dues levied by the Association, and the City shall make such deductions and transmit the sum so deducted to the Association. The provisions of this Section C shall be applicable while the Association continues to maintain a procedure providing for the refund to any employee demanding the return any part of the deduction so made which represents that employee's prorata share of expenditures by the Association in aid of activities or causes of a political or

ideological nature only incidentally related to terms and conditions of employment.

Issue: Wages and Term of Agreement

Section 209.4(c)(vi) of the Civil Service Law limits the effect of our Award to two years from the expiration date of the parties' prior contract. At the formal hearings in this case, neither party objected to a two-year contract term. We agree that a multi-year agreement can only have a salutary effect where, as here, the parties' negotiations have been long and intense and have extended more than seven months into the new contract's term. We shall accordingly impose a two-year agreement, to expire October 31, 1979.

Our determination with respect to wages is based in large part on the discussion set forth above under the heading, "Standards." There are, however, several additional factors which we have considered in reaching our conclusion. First, there is reason to anticipate accelerated increases in the cost of living as reflected in the Consumer Price Index ("CPI"). Although the CPI for a particular area is not equivalent to the

cost of living, it does measure changes in the cost to consumers of goods and services. As such, it is a useful tool for illustrating reduced purchasing power of wages due to inflation. Our award is therefore designed in part to anticipate the impact of future inflationary movements.

Second, although Albany's firefighters are generally within the range of compensation for similar employment in similar cities, they are on the low end of that range, particularly in the case of Battalion Chiefs. Although no substantial catch-up is necessary, there is a moderate increase included to correct in part existing inequities. As a result of all of the foregoing considerations, the effect of this award will be to increase significantly the rate of pay of covered employees at the end of the contract's two-year term.

The third additional consideration involves the cash-flow impact of our award. Although we are convinced that the employer is well able to afford the cost increases required, we find, on the entire record before us, that it is appropriate to abate the immediate cost impact by introducing the required wage increases at eight-month intervals during the two-year contract

period. As a result, employees will arrive at the end of the contract term with much-improved wages; but the employer will have to fund those final wages for only one-third of the contract's term. The result will be to serve the dual goals of appropriate compensation and reasonable costs.

Finally, we have considered the importance of stabilizing the wage differentials among bargaining unit titles. To establish those differentials in the contract will ensure the predictability of future differentials to encourage employees to seek future promotions and will simplify future negotiations by requiring establishment only of the firefighter rate upon which higher ranks' compensation will be based.

We therefore

AWARD

1. The term of the agreement required by this award shall commence November 1, 1977 and shall expire October 31, 1979.

2. The base pay of firefighters shall be increased by five percent retroactive to November 1, 1977. The then-existing base pay of firefighters shall be increased an additional five percent effective July 1, 1978. The then-existing base pay of firefighters shall be increased by an additional five percent effective March 1, 1979.

3. Retroactive to November 1, 1977, the base pay of a lieutenant shall be 112.5% of the base pay of a top-grade firefighter.

4. Retroactive to November 1, 1977, the base pay of a captain shall be 118.5% of the base pay of a top-grade firefighter.

5. Retroactive to November 1, 1977, the base pay of a Battalion Chief shall be 124.5% of the base pay of a top-grade firefighter.

Issue: Longevity Pay

We find that longevity payments are appropriate compensation to reflect increased value to the employer resulting from significant years of service and experience. Indeed,

almost every comparison city within the state except Albany does make some form of longevity payments to its firefighters. The rationale is clear. Experienced firefighters bring superior knowledge, judgment and skill to their life- and property-saving work. They play a valuable role in training less experienced firefighters. The City receives those benefits whether or not the individual firefighters involved ultimately seek improved compensation through limited promotion opportunities.

We do recognize, however, that the longevity pay concept can be an expensive one. We therefore believe it appropriate to introduce the concept on a limited cost basis in the second year of the parties' contract. In future negotiations the parties will be able to allocate resources to longevity compensation in accord with the priorities which they perceive to exist at that time.

We therefore

AWARD

1. Effective November 1, 1978, the base pay of bargaining unit employees having more than ten but less than twenty years'

service in the Fire Department shall be increased by fifty dollars.

2. Effective November 1, 1978 the base pay of bargaining unit members having twenty or more years' service in the Fire Department shall be increased by one hundred dollars.

Issue: Residual Matters

except those agreed to by the parties in the course of negotiations.
[Handwritten signatures]

As to all other demands, neither party has submitted sufficient evidence to justify a change in the status quo.

We therefore

AWARD

The parties shall continue in effect all provisions of their collective bargaining agreement dated June 15, 1977, which expired October 31, 1977, subject to the amendments required elsewhere in this Award and *subject to the parties' specific agreements during the course of negotiations.*
[Handwritten signatures]

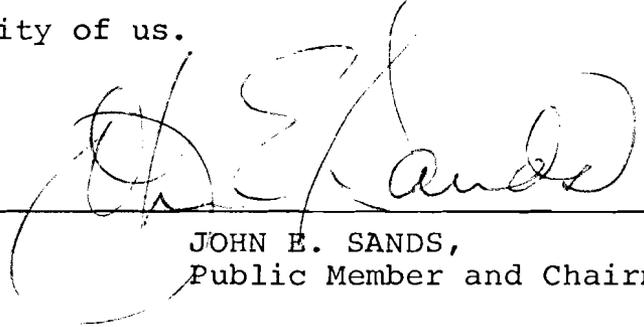
Issue: Endorsement

Although we unanimously endorse the specific awards set forth above, the rationale for each issue has been drafted by

our Public Member and Chairman and, in each case, reflects the views of at least a majority of us.

Dated: June 1, 1978

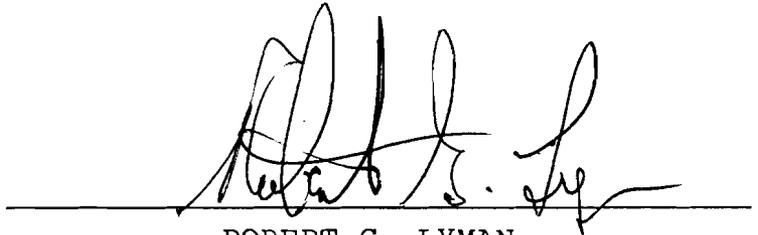
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JOHN E. SANDS,
Public Member and Chairman

Dated: June 1, 1978

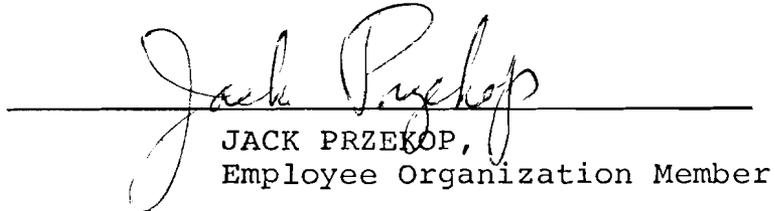
Albany, New York



ROBERT G. LYMAN,
Employer Member

Dated: June 1, 1978

Albany, New York



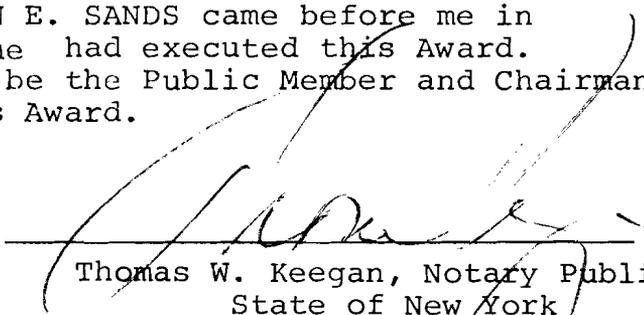
JACK PRZEKOP,
Employee Organization Member

ACKNOWLEDGEMENT

STATE OF NEW YORK)
COUNTY OF ALBANY)

ss:

Today, June 1, 1978 JOHN E. SANDS came before me in person and acknowledged that he had executed this Award. I know him, and I know him to be the Public Member and Chairman who rendered and executed this Award.

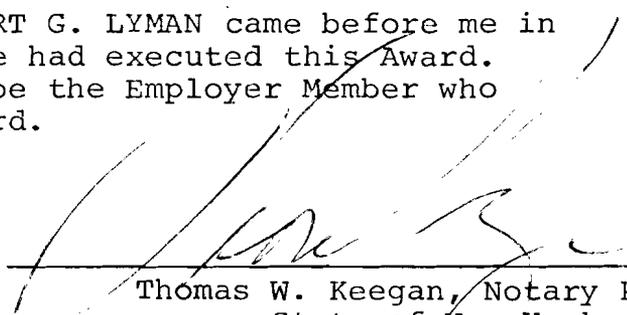


Thomas W. Keegan, Notary Public
State of New York

STATE OF NEW YORK)
COUNTY OF ALBANY)

ss:

Today, June 1, 1978 ROBERT G. LYMAN came before me in person and acknowledged that he had executed this Award. I know him, and I know him to be the Employer Member who rendered and executed this Award.

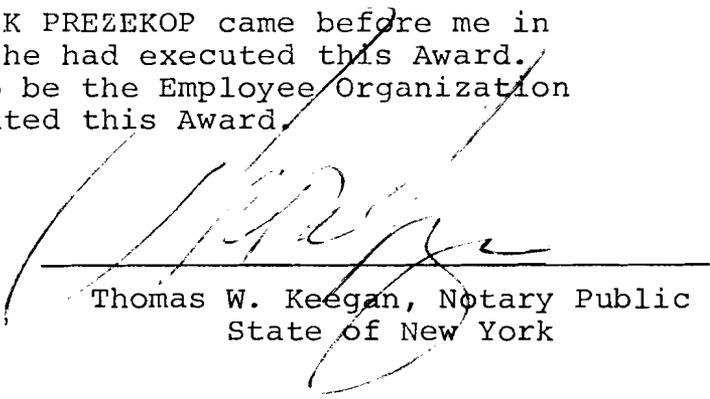


Thomas W. Keegan, Notary Public
State of New York

STATE OF NEW YORK)
COUNTY OF ALBANY)

ss:

Today, June 1, 1978 JACK PREZEKOP came before me in person and acknowledged that he had executed this Award. I know him, and I know him to be the Employee Organization Member who rendered and executed this Award.



Thomas W. Keegan, Notary Public
State of New York