

STATE OF NEW YORK PUBLIC
EMPLOYMENT RELATIONS BOARD
CASE NOS. IA 80-47, M 80-124

~~STATE OF NEW YORK PUBLIC EMPLOYMENT RELATIONS BOARD~~
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In the Matter of the Arbitration Between the
CITY OF WHITE PLAINS
and
PROFESSIONAL FIRE FIGHTERS ASSOCIATION
LOCAL 274 I.A.A.F.

STATEMENT OF
CHAIRMAN OF
PUBLIC
ARBITRATION
PANEL

Pursuant to the provisions of the Civil Service Law,
Section 209.4, Harold Newman, Chairman of the Public Employment
Relations Board designated the following individuals on March 18,
1981 to serve as a Public Arbitration Panel in this proceeding:

- Thomas F. Carey, Public Panel Member and Chairman
- Betrand B. Pogrebin, Esquire, Employer Panel Member
- Gregory P. Young, Esquire, Employee Organization
Panel Member

The Panel was charged by Section 209.4 C(v) to heed the
following statutory guidelines:

"the public arbitration panel shall make a
just and reasonable determination of the
matters in dispute. In arriving at such de-
termination, the panel shall specify the
basis for its findings, taking into consi-
deration, in addition to any other relevant
factors, the following:

(a) comparison of the wages, hours and conditions 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 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.

After several postponements the Panel conducted its hearings in White Plains, New York on August 27, 1981. The Employer and the Employee Organization were present and they were afforded full opportunity during these hearings to present evidence and argument in support of their respective contentions.

After the closing of the hearings, and the receipt of briefs and reply briefs, the Panel met in executive session in December 1981 and deliberated on the single remaining issue of the original negotiating issues. It was this single issue that was presented in the Petition For Compulsory Interest Arbitration filed by the Employee Organization. The results of these deliberations are

contained in the accompanying Award issued by the Panel on January 10, 1982. The Panel was not unanimous in its conclusions on the single issue it was charged to arbitrate.

The Panel took into consideration the evidence and argument with respect to the single item that had been presented at the hearing and in the briefs and made its determination based upon such evidence and argument.

BACKGROUND

The City of White Plains employs approximately 170 Firefighters. The Firefighters are involved in a two platoon work system with the day platoon working from 8 a.m. to 6 p.m. and the night platoon working from 6 p.m. to 8 a.m. the following morning. The Department is divided equally into four groups. All members of the Department are members of the P.F.F.A. bargaining unit (Deputy Chiefs, Lieutenants and Firefighters), exclusive of the Chief of Department and are covered by the Collective Bargaining Agreement.

GENERAL PROCEDURES

1) To the degree that the single issue reflects economic improvement it was evaluated in accordance with the testimony, argument and data submitted, and weight was given, in addition to other criteria, to Firefighters salaries, the cost of the balance

of their settlement, benefits and contract settlements in comparable communities; salary improvement for other City employees; changes in the Cost of Living; the financial position of the City, and the like.

2) In this single impasse issue, where the Union is requesting the inclusion of a new contract provision and the City opposes it, the Panel, in addition to other criteria, has sought to determine from the evidence submitted the extent to which: (a) the Party requesting the inclusion has been handicapped by its omission, or (b) how the Party resisting would be harmed by its inclusion.

BASIS FOR THE AWARD

On August 1, 1980, the Parties had reached agreement on a one (1) year contract to cover the period July 1, 1980 to June 30, 1981. The Agreement included:

- * a seven (7%) per cent raise
- * a new clothing maintenance allowance of \$100.
per member year
- * an "economy bonus" of \$225. per member
- * a new "unallocated" fringe benefit payment
of \$125. per member per year.

The base salary for Firefighters in White Plains prior to the signing of this Agreement was \$18,927.00 per year. The clothing maintenance allowance, unallocated fringe benefit, and

economy bonus payments, totalling \$450. per member, are worth approximately 2.4% to the unit members ($\$450. + \$18,927 = 2.4\%$). When added to the 7% wage increase, the 1980-1981 agreement yielded a total settlement of 9.4% for the year. Effective July 1, 1980, the new base salary was set at \$20,252.00.

The remaining demand, "Check-in," to be effective on July 1, 1980 would represent an additional 1-2/3% of pay times 11/12 "for check-in time" and would call for an additional \$310. per man.

The Union advances a major argument on the issue of comparability with other units in the area, in general, and with the White Plains Police Officers, in particular.

First, the maintaining of "parity," with Police who receive a night differential, rationale tends to ignore a salient point. The argument falters on two grounds. Those Police Officers who work a three (3) shift rotation do receive a night shift differential. However, this benefit is received by only 105 members of the 196 member police force. In the Firefighters demand, all members of the unit would benefit.

Secondly, the demand itself calls for "pay for check in time," but makes no representation or a proposal of how much "check in" time would be added to the existing work day to accomplish this goal. The only "comparable" in White Plains is the ten (10) minute "muster time" required of police officers before they begin their tour. Absent a concrete proposal, serious question exists, in the

Chairman's judgement, as to whether the Union would be prepared to accept an extension of the work day for 10-15 minutes per day.

The factor of ability to pay, while important in general terms relating to the Parties' overall wage settlement, is not found to be central to a resolution of this single issue dispute.

The Panel spent some time exploring and testing a range of alternatives in an effort to identify a viable settlement of this issue with mutually acceptable terms and conditions. Unfortunately, consensus could not be realized on the elements of a compromise and the Award attached hereto was ultimately ratified by majority vote.

Based upon the various factors which Section 209.4 charged the Panel to consider, it is my opinion that the Award of the Panel, based upon the applicable standards in the statute, was fair, equitable, and warranted by the evidence presented at the arbitration hearings.



THOMAS F. CAREY, Public Panel
Member and Chairman

DATED: January 10, 1982

STATE OF NEW YORK

PUBLIC EMPLOYMENT RELATIONS BOARD

CASE NO. IA 80-47 M 80-124

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 In the Matter of Impasse Between *
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 CITY OF WHITE PLAINS, NEW YORK *
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 and *
 *
 PROFESSIONAL FIREFIGHTERS ASSOCIATION *
 LOCAL 274 I.A.A.F. *
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AWARD OF
PUBLIC
ARBITRATION
PANEL

ARBITRATION PANEL

THOMAS F. CAREY, Chairman, Public Panel Member
 BETRAND B. POGREBIN, ESQUIRE, Employer Panel Member
 GREGORY P. YOUNG, ESQUIRE, Employee Panel Member

RECEIVED
 JUN 01 1982
 CONCILIATION

APPEARANCES

CITY
 PAUL SCHREIBER, ESQUIRE Counsel

ASSOCIATION
 DUNCAN MACRAE President

I. SINGLE OPEN ISSUE

This matter was brought before PERB on the Joint Petition for Compulsory Interest Arbitration submitted by the Professional Fire Fighters Association, Local 274, I.A.F.F. (hereinafter referred to as the "Association") and the City of White Plains (hereinafter referred to as the "City").

The Petition placed before PERB the one outstanding issue which remained between the Parties in their negotiations which led to an agreement covering the period July 1, 1980 to June 30, 1981; the Association's demand for "check-in" pay. That demand reads as follows:

CHECK IN

"Effective July 1, 1980 each member of the bargaining unit will be paid at the rate of 1-2/3% of annual pay times 11/12 for check-in time."

The City refused to agree to the demand.

II. POSITIONS OF THE PARTIES

Position of the Association

The City issued an order on August 6, 1980 which required members to report for duty at 8 a.m. and 6 p.m. rather than following a prior practice of reporting early. The bargaining unit notes certain Rules and Regulations that members of the Department are bound by. They cite Section 126 of the Book of Rules (U-2, p 51) which states:

"Members shall obey all laws, rules and regulations, orders and commands. Such obedience shall be prompt, implicit and unqualified." (emphasis added)

Section 127 of the Book of Rules (U-2, p 51) states:

"Chief Officers and Company Officers, when being relieved from duty, shall inform the officers relieving them of every incident occurring in connection with their Unit; of every Department order received during their tour of duty, and of any information which may affect the discipline or efficiency of the Unit." (emphasis added)

Also, Section 124 of the Book of Rules (U-2, p 51) which states:

"Members, designated to perform temporarily the duties of a higher rank shall abide by the regulations and orders affecting that rank...."

Section 110 of the Book of Rules (U-2, p 45) states that members of the Unit assigned to drive apparatus:

"....shall, in quarters or at fires, report to the chauffeur relieving them, the condition of the motors and pumps, and advise them of any actual or anticipated trouble with the apparatus...." (emphasis added)

Finally, Deputy Chiefs are responsible to hold subordinate Officers accountable for:

"Strict compliance with, and the enforcement of, every order, rule, law and ordinance governing the Uniformed Force." (U-2, p 45) (emphasis added)

The above-mentioned standing Rules and Regulations of the White Plains Fire Department are, in the Association's view, crucial

to the thrust of the Association's case. The Association maintains the Department demands communications between members at the change of shift yet it is not willing to pay the men for it.

The Association claims when the City changed "the entire concept of check-in," which was a practice of eight to ten years, it unilaterally eliminated the practice by Departmental order on August 6, 1980 which stated:

"No one to go off duty before 0800 or 1800 unless exchange of duty."

The Association charges the reporting procedure of the past eight to ten years had, "at the stroke of a pen," been eliminated by the Commissioner of Public Safety. The Association further argues to rule adversely on Check-in would be to cause a disparate situation between the Fire Fighters and the Police in the City of White Plains. It would upset the long history of "parallel wages and benefits" enjoyed by members of the Fire Department and Police Department.

Position of the City

The City asserts there never was a practice whereby the Fire Fighter who was relieved early stayed on until the end of his shift. Under the practice, the City reports a Fire Fighter once relieved went home. The City cites the testimony of Chief McMahon, who was a member of the bargaining unit at the time the practice arose, that the early relief practice was done at and for the

convenience of the Fire Fighters. In all cases, the arrangement as to hours of relief were made between the men themselves.

The City avers that in July 1980, the Association requested that its members "work to rule" by reporting as provided in the contract, promptly at 8:00 a.m. and 6:00 p.m., and not leaving until those designated hours. On August 6, 1980, the City promulgated a rule stating that "no one is to go off duty before 0800 (8:00 a.m.) or 1800 (6:00 p.m.) unless exchange of duty." (U. Ex.7) Shortly after this rule was promulgated, the Association prepared an improper practice charge, alleging that by its actions, the City deprived its members of "rights and benefits"....heretofore enjoyed...." and further that the City's acts "punish rank and file members for the legal actions of their (Union)."

The City charges the Association never made clear what its "check-in" demand was payment for. The City claims the Association argued for the first time at the hearing that this payment is for the few minutes "overlap" between shifts which occurs at 8:00 a.m. and again at 6:00 p.m.

The City maintains Fire Fighters in White Plains are neither asked nor required to "check-in." They may, on arrival at work, consult with those who are leaving at the end of their shifts, but the City submits that this is a normal part of everyday industrial life in any multi-shift work situation. The City advances this follows from the fact that employees generally are expected

to be at their work stations and ready to begin performing their work at the start of their shift. "This requirement, common to industrial life in general, inevitably necessitates some overlap and contact between oncoming and outgoing employees. It is an ordinary part of the job."

The City argues neither the comparable employees in White Plains nor the Fire Fighters in comparable communities receive pay for "check-in," though all these comparable employees do, in fact, 'check-in' and the White Plains Fire Fighters do not." Application of the criteria of comparability are, in the City's view, against the granting of this demand.

The City concludes the past practice was abrogated by the Association, and then confirmed by order of the City. The City avers the Association seeks to recast the nature of the "service" to one of communications between changing shifts. This approach, the City insists, was never claimed before. The City notes there is no offer that "check-in time" was a formal required time comparable to the ten (10) minute "muster time" of the police.

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The undersigned Arbitrators, having been designated pursuant to the provisions of Section 209.4 of the New York State Civil Service Law, and having duly heard the proofs and allegations of the Parties, hereby make the following:

A W A R D

The term and condition of employment specified as "not agreed upon" in the petition for Compulsory Interest Arbitration filed by the Association is decided as follows:

1) The demand that effective July 1, 1980, each member of the bargaining unit will be paid at the rate of 1-2/3% of annual pay times 11/12 for "check in" time is DENIED.

2) The Parties are urged to meet and confer in an effort to determine whether or not the prior informal practice of early relief can be re-established in an orderly fashion and in a manner deemed mutually beneficial to both Parties.

Thomas F. Carey

Award #1 Concur/~~Dissent~~
Award #2 Concur/~~Dissent~~
Thomas F. Carey
Chairman of the Panel

Dated: 1/10/82

STATE OF NEW YORK
COUNTY OF NASSAU

On this 10 day of January 1982 before me personally came and appeared THOMAS F. CAREY, 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.

James Joseph Glennon
JAMES JOSEPH GLENNON
NOTARY PUBLIC, State of New York
No. 30-6543135
Qualified in Nassau County
Commission Expires March 30, 1982

Betrand P. Pogrebin

Award #1 Concur/~~Dissent~~
Award #2 Concur/~~Dissent~~
Betrand P. Pogrebin
Board Panel Member

Dated: 1/15/82

STATE OF NEW YORK
COUNTY OF NASSAU

On this 15th day of January 1982 before me personally came and appeared BETRAND P. POGREBIN, 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.

Susan Angelos
SUSAN ANGELOS
NOTARY PUBLIC, State of New York
No. 30-4503917
Qualified in Nassau County
Commission Expires March 30, 1983

Award #1 Concur/Dissent
Award #2 Concur/Dissent
Gregory P. Young
Board Panel Member

Dated:

STATE OF NEW YORK
COUNTY OF

On this day of January 1982 before me personally came and appeared GREGORY P. YOUNG, 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.

MAILGRAM SERVICE CENTER
MIDDLETOWN, VA. 22645

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1 5164337596 MGM TDMT JERICO NY 05-13 0811A EST

T F CAREY PANEL CHAIRMAN
646 PARKSIDE DR
JERICO NY 11753

THIS MAILGRAM IS A CONFIRMATION COPY OF THE FOLLOWING MESSAGE:

5164337596 MGM TDMT JERICO NY 58 05-13 0811A EST

ZIP

GREGORY YOUNG, ESQ
GROSS AND YOUNG
9 WEST PROSPECT AVE
MT VERNON NY 10550

URGENT I HAVE YOUR VOTE ON THE WHITE PLAINS AWARD

AWARD IS NOW FIVE MONTHS OVERDUE, PANEL DECISION WILL BE OFFICIALLY
RELEASED ON MAY 25 1982

CC: BERTRAND POGREBIN
RAINS AND POGREBIN
210 OLD COUNTRY RD
MINEOLA NY 11501
T F CAREY PANEL CHAIRMAN

08:15 EST

MGMCOMP