

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD
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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Interest Arbitration :
: :
Between :
: :
BINGHAMTON FIREFIGHTERS, LOCAL 729, AFL-CIO, :
IAFF, :
: :
- and - :
: :
CITY OF BINGHAMTON :
:

~~CONFIDENTIAL~~
PERB Case No.
IA81-28;
M81-415

Before: The Public Arbitration Panel:

Norman Brand, Public Member and Chairman
Celestine Kelly, Employee Member
Phillip J. Kramer, Employer Member

On December 18, 1981, 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." In accordance with our statutory authority, we conducted formal hearings on March 4 and 5, 1982, at the offices of the City of Binghamton in Binghamton, New York. We subsequently met on May 17, 1982 in executive session. Thereafter, the Panel conducted further discussions by telephone. At the formal hearings both parties appeared through their representatives and had full and equal opportunity to present documentary and testimonial exhibits and to examine and cross-examine witnesses under oath. Both parties presented pre-hearing briefs. A transcript of the proceedings was made. As a result of conversations had between the parties at the hearing a number of items were withdrawn from the Panel's consideration upon motion of the

party appointed arbitrators. The following issues were left for determination by the panel:

1. Holidays (Article 2)
2. Sick Leave (Article 5)
3. Death Benefits (Article 6)
4. Insurance (Article 8)
5. Uniforms (Article 9)
6. Release Time for Association Business (Article 14)
7. Term of Contract (Article 21)
8. Retroactive Clause (Article 22)
9. Salary and Longevity (Article 23)

The panel has carefully considered each of these issues in light of the statutory criteria contained in Section 209.4(c)(v) of the Civil Service Law. These criteria are:

The Public Arbitration Panel shall make a just and reasonable determination on the matters in dispute. In arriving at such determination, the Panel shall specify the basis for its findings, taking into consideration, in addition to any other relevant factors, the following:

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 interest 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 agreement 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 our consideration we have reached the following conclusions.

1. Holidays (Article 2).

The expired contract provides for eleven holidays. These are enumerated in Article 2, Section A1. The firefighters propose adding Easter Sunday to the enumerated holidays in the contract thereby bringing the number to twelve. The City opposes this addition.

(a) Comparability

The exhibits of both parties demonstrate that the average number of holidays firefighters enjoy is eleven. Thus, there is no justification on the basis of comparability for adding an additional holiday to Article 2, Section A.

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

No public interest was cited by either party in support of or in opposition to this demand. Exhibit C of the City's pre-hearing brief contains an average salary for firefighters of \$18,133.00 per year. This figure is somewhat high by virtue of the fact that it contains holiday pay. However, calculating the hourly rate of pay by the method contained in Article 12 of the expired agreement, using a forty hour work week and 2,088 hours in the work year, the average hourly pay of firefighters would be \$8.68 per hour. Thus, an additional holiday would cost the City approximately \$69.00 straight time pay for a firefighter who did not work the day and approximately \$104.00 for time and a half for a firefighter who did work the day. Viewed in isolation, the

City has the ability to pay each firefighter these additional amounts. Indeed, it offered to increase pay by \$500.00 per firefighter. However, any increase in payment for holidays would decrease the total resources available for appropriate wage adjustments. The Panel deemed it more appropriate to allocate those resources of the City available for increases to areas in which such increases were justified by the other criteria.

(c) Peculiarities of Firefighting

No evidence was presented as to any peculiarities of firefighting which would suggest the need for any change in the number of holidays.

(d) Terms of Past Collective Bargaining Agreements

No evidence was presented to suggest that the current number of holidays represents any departure from a long standing practice.

Conclusion:

The Panel finds no justification for providing an additional holiday.

2. Sick Leave (Article 5)
3. Death Benefits (Article 6)

The expired agreement provides for the accumulation of one day of sick leave for non-duty connected injury or illness per month. This sick leave may be accumulated without limitation. The firefighters proposed that a firefighter's survivors or estate be paid fifty percent of his accumulated sick leave at his death. The City opposed this on the basis of its cost.

(a) Comparability

The firefighters provided no data indicating which comparable cities provided this benefit to their firefighters. It was stated that both Endicott and Johnson City, which the firefighters do not believe to be comparable cities, have a similar benefit but with a cap of one hundred and fifty days on the accumulation of sick leave which may be paid for at death.

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

The firefighters argued that this would promote the interest and welfare of the public in that it would act as an incentive for firefighters to avoid using sick leave, particularly near the end of their careers. Furthermore, it was asserted that the City would save significant sums of money by not replacing firefighters who received this benefit until their vacancy had existed for the same number of days for which they received the benefit. At the hearing it was noted that the City already has the ability to decide when to fill vacancies. In addition, since firefighters are neither paid for unused sick leave nor replaced when they are out on sick leave, this would represent a substantial increase in costs to the City.

(c) Peculiarities of Firefighting

No evidence was offered as to any relationship between this proposed benefit and the peculiarities of firefighting.

(d) Terms of Past Collective Bargaining Agreements

No evidence was presented to indicate that the terms of past collective bargaining agreement had any bearing on this proposal.

Conclusion:

The Panel finds no justification for providing this new benefit.

4. Insurance (Article 8)

The expired agreement provides for the City to pay seventy-five percent of the premiums for health insurance for the firefighters. It pays this same percentage regardless of whether the firefighter elects the family plan or an individual plan. The City does not currently provide any form of dental insurance to firefighters.

The firefighters propose an immediate assumption by the City of one hundred percent of the cost of premiums for health insurance benefits. The parties agreed that this would cost approximately \$70,000.00 in fiscal year 1982. The firefighters also proposed adding a dental insurance plan which would cost the City something over \$40,000.00 per year.

The City opposed both of these changes. The City argued that the health insurance changes proposed by the firefighters would be too costly. It argued the same for the dental benefits. In addition, the City argued that when employees pay a percentage of the cost of the premiums for their health insurance they have a disincentive to abuse that health insurance. Howev-

er, the City presented no data in support of this argument. Finally, the City argued that a dental insurance plan is not a generally accepted benefit for firefighters.

(a) Comparability

According to the 1979 PERB Report on Fringe Benefits thirty-five out of the thirty-eight reporting municipalities paid one-hundred percent of the health insurance premiums for their firefighters, one paid eighty-five percent, and one paid one hundred percent of the individual premium and ninety percent of the family premium. Binghamton stood alone in paying only seventy-five percent of the health insurance premiums for its firefighters. Indeed, these data show that ninety-five percent of the municipalities pay the full cost of health insurance benefits for an individual and ninety-two percent pay the full cost of family benefits for their firefighters. Thus, Binghamton Firefighters are uniquely disadvantaged. They have the worst health insurance premium benefit of any group of firefighters in the State.

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

It was suggested by the City that "co-payment" provides an incentive not to abuse a health insurance plan. While this would provide strong support for the City's position, no evidence of this disincentive effect was provided. Thus, we cannot conclude that the interests and welfare of the public require that firefighters continue paying some portion of their health insurance premiums.

Nor can we impose upon the City the burden of immediately paying one hundred percent of the premiums for firefighters' health insurance, since this would cost the City \$70,000.00 in the first year. The Panel has determined that the City's ability to pay mandates a gradual phasing in of the full health insurance benefit. The method we have chose will cost the City \$11,673.61 in 1982. Since, as the City noted at the hearing, it is impossible to be certain of the future costs of health insurance we cannot calculate the exact amount that it will cost the City in 1983. However, what we can say with certainty is that in 1983 the City will pay, overall, 95.83% of the total cost of health insurance premiums. It will not be until 1984 that the City will actually bear the entire cost of the benefit. We have identified sufficient funds in, among other places, the City's contingency account to pay the \$11,673.61 that would be required in fiscal year 1982.

On the other hand, the \$40,565.67 required for a dental plan would, when combined with the salary increase we have deemed appropriate, require too large a drain on the City's finite financial resources.

(c) Peculiarities of Firefighting

No specific evidence was presented on the peculiarities of firefighting which affect health insurance. However, it should be noted that as a result of the exposure of twenty-one firefighters to dioxins in the State Office Building fire, there are unknown risks to these men and their families. While duty related injuries to firefighters are covered through other pro-

visions of law, it is not clear that health problems that they might transmit to their future family members are also covered. Thus, it seems appropriate that the City should move to paying the full cost of health insurance for the firefighters.

(d) Terms of Past Collective Bargaining Agreements

The last time that the percentage of health insurance premiums paid by the City was increased was in 1974. At that time the City increased its share from fifty percent to seventy-five percent. Given the Panel's determination on this matter, it will be 1984 before full premiums are paid by the City. Thus, the firefighters will have moved from fifty percent to one hundred percent over a ten year period.

Conclusion:

Binghamton Firefighters while not unusual in their lack of dental benefits are unique in paying the largest percentage of health insurance premiums of any firefighters in the entire State. Although the situation must be remedied, the Panel is aware of the City's fiscal situation, noted below, and the consequent constraints on the City's immediate ability to fund a large change in the method of payment. Therefore, the Panel concludes that the City shall increase its share of health insurance premiums for firefighters, regardless of whether they choose the family or individual plan, in accordance with the following schedule:

July 1, 1982 increase to eight-three and one-third percent.

January 1, 1983 increase to ninety-one and two-thirds percent.

July 1, 1983 increase to one hundred percent.

In light of the City's financial circumstances, no dental plan is recommended.

5. Uniforms (Article 9)

The expired agreement provides for each active firefighter to be allowed \$350.00 a year as a uniform allowance. The firefighters have asked for a \$50.00 increase in the uniform allowance. The City has opposed this increase on two grounds. First, it argues that the current amount adequately pays for the annual uniform needs of a firefighter. Second, it argues that this amount is comparable to or greater than what is paid other firefighters in the area.

(a) Comparability

The firefighters offered no data on the uniform allowance of firefighters in comparable departments. The City, on the other hand, showing that Binghamton Firefighters receive a relatively generous uniform allowance in relation to that provided by other cities. (See City Exhibit B)

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

The firefighters provided data showing that the cost of uniforms has increased approximately fifty-three percent since 1976. During that same time, the uniform allowance for firefighters increased approximately twenty-three percent. Therefore, firefighters argued that an increase in the uniform allowance is required.

The weakness in the firefighters argument is that no correlation has been drawn between the increased costs of individual items and the actual needs of the firefighters. As the City pointed out, the one firefighter who testified indicated that the \$350.00 was adequate to cover his uniform needs during the past year. Since the purpose of a uniform allowance is to have the City pay the cost of maintaining the uniforms it requires firefighters to wear, it would appear that that purpose is adequately served with the benefit set at \$350.00 per year. Thus, whether there are adequate monies in the City treasury to pay for the increase requested by the firefighters is irrelevant.

(c) Peculiarities of Firefighting

Since the dangers of firefighting require special equipment, it is appropriate that the City provide for the upkeep and replacement of that equipment for its firefighters. In this instance it appears that the City is doing that through the allowance of \$350.00 per year per man for that purpose.

(d) Terms of Past Collective Bargaining Agreements

Past agreements have provided for increases in the amount allowed firefighters for their uniforms. Most recently, in 1981 the uniform allowance increased from \$315.00 to \$350.00.

Conclusion:

The evidence presented shows that the current uniform allowance is adequate. Therefore, no increase from the \$350.00 level is required.

6. Release Time for Association Business (Article 14)

The expired agreement provides for "release time with pay" to be given "Officers and Delegates designated by the Association for Association business." The contract specifically provides for this release time to be provided for the purpose of attending certain conventions. The City proposes to eliminate release time for Union business and provide an aggregate of six "man days" (which could be called alternatively, "person days") of release time to attend Union functions such as conventions. In addition, it would permit an aggregate of four man days -- without pay -- for other Union representatives to attend conventions.

The City argues that the current use of release time is "abusive". It does not argue that individuals have abused this release time, rather it argues that overall it is an "abuse". The firefighters contend that it is neither abusive nor excessive. In support of its position the City introduced a compilation of release time used in 1981 through August 27, 1981. (C-7) This exhibit showed that a total of 334.5 hours had been used up to that date. When asked why the City could not provide full year data at the hearing, the City suggested that the data provided be extrapolated. The Panel notes that such an extrapolation would be highly suspect. That is, the contract provides for firefighter attendance at one convention a year and the data was compiled shortly after the convention. Thus, an extrapolation would assume -- contrary to fact -- that there were two

State conventions each year and both were attended by a delegation of firefighters.

(a) Comparability

The City provided no data upon which a comparison with other firefighters could be made.

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

The City provided no data as to the cost of this benefit to the City.

(c) Peculiarities of Firefighting

The City provided no data as to the relationship between the peculiarities of firefighting and its request.

(d) Terms of Past Collective Bargaining Agreements

The City provided no data on the history of this particular contract provision.

Conclusion:

The Panel finds no justification for the City's proposal to reduce release time.

7. Term of Contract (Article 21)

The firefighters requested a two year contract. At the hearing the testimony of the representative of the City was that the City "does not object to a two year contract." (Tr. 394) Therefore, the panel has determined that the contract will be for two years from January 1st, 1982 through December 31st, 1983.

8. Retroactive Clause (Article 22)

The expired agreement provides that:

The parties agree that the provisions of this Agreement will be retroactive to January 1, 1981, if the contract is not executed prior to that date by the duly authorized representatives of the City and the Association.

The firefighters proposed adding the following clause to that section:

Section (B)

In the event that the parties do not enter into a new contract for the expiration of this Agreement, the parties agree that the terms and conditions of this Agreement will be continued until the negotiation and enactment of a new Agreement, or Award of an appropriate arbitration panel.

No evidence was provided by either party at the hearing or in the pre-hearing briefs in support of either position. Therefore, the Panel determines that the provisions of the new contract shall be retroactive to January 1, 1982 except insofar as this Award directs otherwise. The language of the clause shall be changed to substitute "January 1, 1982" for "January 1, 1981".

9. Salary and Longevity (Article 23)

The firefighters have requested a twelve percent one year increase in the salary schedule. In addition they have requested a \$50.00 increase in each of the longevity steps of eight and fifteen years. The City has offered a flat \$500.00 one year increase across the board.

(a) Comparability

As is common, the firefighters and the City have chosen different groups of cities with which to make comparisons. The

firefighters have compared their salaries with those in Schenectady, White Plains, Troy, New Rochelle, and Mount Vernon. These cities have populations ranging from 48,000 to 72,000 and salaries ranging from \$16,852.00 to \$23,147.00. In this grouping Binghamton first grade firefighters are fifth out of six. The City has used for comparison Johnson City, Endicott, Elmira, Syracuse, Troy, Utica, and Schenectady. These cities range in population from 14,000 to 170,000. The salaries range from \$14,592.00 to \$20,306.00. In this listing Binghamton appears third from the top. Since the Bureau of Labor Statistics uses political entities of 50,000 or more as a bench mark for comparison, we have chosen that figure. In that grouping Binghamton appears sixth out of seven cities. With the change in base salary that the Panel has deemed appropriate Binghamton would not change its relative position in either of the comparison groups chosen by the parties or in all cities over 50,000.

In terms of negotiated increases in other public sector employee's compensation for 1982, the data shows that other public employees in Broome County received a nine percent increase for 1982 and eight percent for 1983, with a CPI reopener capped at 9.5 percent. According to PERB data (Exhibit I) negotiated increases for firefighters were 8.1 percent in 1981 and 7.8 percent in 1982. The arbitrated settlements were 7.7 percent and 6.8 percent for those same years.

According to data provided by the firefighters (Exhibits F, G, M) the increase in the CPI from 1972 to 1981 was 128.5 percent. During that same period firefighters received a 73.7

percent increase in their compensation. All manufacturing workers received a 94.7 percent increase in their wages.

Thus, in terms of comparability, the increases found appropriate by the Panel are in line with those granted other firefighters, other public employees, and private sector workers.

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

Preliminarily, it should be noted that the City's financial picture changed dramatically approximately two weeks before the hearing. In effect, almost two million dollars disappeared from the balance sheet. This "disappearance" was due to changes made by the City's new Director of Finance, who was appointed February 16, 1982. For eleven years the City had been accumulating as an asset money borrowed by the parking ramp from the General Fund. The total was 1.6 million dollars. The State Department of Audit and Control had been critical of the City for carrying this as an asset, because it felt that there was no likelihood that the parking ramp fund would ever pay this money back to the General Fund. Although this eleven year debt could have been written off in more than one year -- and this was considered -- Mr. Freed (the new Director of Finance) decided to write it all off this year.

In addition, the City ended fiscal year 1981 with an unreserved balance of \$237,593.00. To a large extent this represented the City's practice of not accruing all of the end of year payroll in the year in which the services were performed. It was noted at the hearing that the appropriate City officials have not

approved any change in accounting methods (Tr. p. 220). Nor has Audit and Control, according to the testimony, criticized the City for this practice. However, Mr. Freed did not include this amount in the 1982 budget. A further decision that was made shortly before the hearing was to set up a reserve of \$430,000 from the General Fund to cover losses on tax certiorari cases, losses of sales on in rem properties, and uncollected taxes. Mr. Freed testified that, "It represents a reserve against future losses, 1982 and beyond." (Tr. p. 264) The actual experience of the City in 1981 was that \$254,402.00 was needed for these purposes (Tr. p. 263). Thus, it would appear that Mr. Freed has been extremely cautious in his approach to these items.

While caution is a virtue in a Director of Finance, it should not obscure the fact that there that there are sufficient monies available to fund appropriate wage increases for the firefighters. Moreover, this is only part of the picture.

For many years the City of Binghamton has operated close to its constitutional tax margin. In 1971 it was within \$83,000.00 of the margin. For 1982 it has close to \$700,000.00 of unused margin for taxing. With the payoff of a \$750,000.00 Social Services bond in 1982 there will be less margin in 1983, but the City will also not have to pay \$750,000.00 out of tax levy dollars in that year. Thus, although the City is relatively close to its constitutional tax margin, it has operated that way for many years and the Panel need not give much weight to that factor.

In the area of known losses from budgeted amounts, the City estimated that it would not receive \$116,000.00 in revenue from in lieu taxes which had been budgeted for 1982. Furthermore, certain City accounts which were overexpended in 1981 were again budgeted at 1981 levels. On the basis of these accounts Mr. Freed estimated that if nothing were done an overexpenditure of \$500,000.00 would result. However, Mr. Freed has been meeting with the heads of appropriate agencies to require them to stay within their budgets. More importantly, Mr. Freed's estimate of \$500,000.00 did not take into account those funds which were overbudgeted. In fact, it was his testimony that all of the overexpenditures in funds (listed in Exhibit C-3) did not result in any deficit in the fund balance as a whole. (Tr. p. 297) That is, under- and overexpenditures roughly approximated one another in 1981.

Finally, certain revenue estimates appear understated. Binghamton has traditionally underbudgeted sales tax revenues. While it took a one time loss in 1982 as a result of the census, it is also in the process of negotiating a new sales tax arrangement with the County. The largest single item of understated revenue is per capita State aid. Binghamton received about 1.2 million dollars in 1981. Although there is pending legislation providing for approximately the same amount, the City has included no revenues for per capita state aid in the estimated revenues in its budget. The Panel finds that the City can afford a seven percent increase for 1982 and an eight percent increase for 1983. The City already has a salary contingency fund in

which was budgeted a three percent increase for 1982. It has also budgeted the cost of the increased fringe benefits associated with this raise. An additional four percent, with fringe benefits, will cost \$197,000.00. Given the monies that have been identified in the current budget, the City clearly has the ability to pay this amount as well as the additional \$12,000.00 for health insurance premiums. (See Item 4) Furthermore, it is consistent with the interest and welfare of the public for the City's firefighters to retain their relative position among firefighters in like cities and thereby maintain their good morale.

(c) Peculiarities of Firefighting

Firefighting is a uniquely hazardous occupation. Each year firefighters compete with miners for the unwanted distinction of having the most dangerous job. According to figures provided by the firefighters, miners in New York State had an average annual wage of \$26,992.00 in 1980.

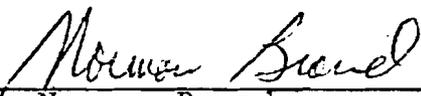
(d) Terms of Past Collective Bargaining Agreements

According to data provided by the City (Exhibit F) firefighter increases averaged 7.5 percent in 1979, 10 percent in 1980, and 9.4 percent in 1981. Overall, the raises averaged 8.96 per year during this period. While the raise the Panel finds appropriate for 1982 will be lower than any that has been received in prior years, and while the raise for 1983 will be lower than the average raise over these three years, the Panel deems it appropriate in light of the City's expressed need to readjust to its shrinking tax base.

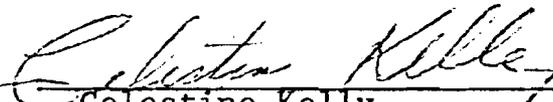
Conclusion:

In light of the statutory criteria the Panel finds a seven percent increase in salary schedule retroactive to January 1, 1982, and an eight percent increase in salary schedule as of January 1, 1983, appropriate. Since salary and longevity are intertwined in firefighter compensation, no further increase in longevity is deemed appropriate.

Dated: June 29, 1982



Norman Brand
Public Member and Chairman



Celestine Kelly
Employee Member

I dissent.



Phillip J. Kramer
Employer Member

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

On this 29th day of June, 1982, before me personally came and appeared NORMAN BRAND, 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.

Gloria M. Meany

GLORIA M. MEANY
Notary Public, State of New York
Qualified in Albany County
Commission Expires March 30, 1984 *84*

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

On this 6th day of July, 1982, before me personally came and appeared CELESTINE KELLY, 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.

Colleen Ann Wagner

COLLEEN ANN WAGNER
Notary Public, State of New York
Qualified In Albany County
My Commission Expires March 30, 1984

4632387

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

On this *12th* day of *JULY*, 1982, before me personally came and appeared PHILLIP KRAMER, 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.



MARLENE LIGUS
Notary Public of State of New York
Residing in Broome Co.
My commission expires March 30, 1984

