STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Interest Arbitration Between TROY UNIFORMED FIREFIGHTERS ASSOCIATION, LOCAL 2304, IAFF, AFL-CIO - and - CITY OF TROY	:	PERB Case No. IA 81-31; M81-436

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CONCILIATION

Before the Public Arbitration Panel:

Norman Brand, Public Member and Chairman
J. Albert Barsamian, Employee Member
Alson J. Spain, Jr., Employer Member

On January 8, 1982, 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 February 18, 19, and 20, 1982, at the offices of PERB in Albany, New York. We subsequently met in executive session on various occasions. 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.

The parties have agreed that except for the issues before this panel the contract shall be that contained in Exhibit 1 of the City brief. The parties specified the issues before the panel as:

1. Holidays and Holiday Pay (Article XII)

2. "Recall" (Article IX, Schedule C)

3. "Kelly Days" (Article XIII, (ii))

4. Salary and Wages inclusive of Longevity (Schedule)

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;
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> 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 our consideration we have reached the following conclusions.

1. <u>Holiday and Holiday Pay</u>

The contract currently provides for eleven holidays. Employees receive an extra eleven days of pay in December of each year, regardless of which holidays they have actually worked.

The City proposes to maintain the same holidays set forth in the previous contract but to change the method of payment. The City proposes that all employees receive the irregular salary for holidays. In addition, those employees who actually work any holidays will receive additional compensation of time and one-half for those holidays. The Firefighters propose retaining the current method of payment while adding two new holidays, Flag Day and Uncle Sam's Birthday.

(a) Comparability

The exhibits of both parties demonstrate that the average number of holidays firefighters enjoy is eleven and that, on the whole, they are paid for thoese holidays whether they work them or not. (See, City Exhibit 3, Firefighter Exhibit "I"). Neither party presented evidence as to which days are denominated holidays in other contracts. However, which days are actually named is irrelevant in light of the fact that payment for holidays is based on the number of days, not when they occur. Thus, while Flag Day and Uncle Sam's Birthday may have special significance for Troy, the only effect of the Firefighter proposal would be to give two more days' pay to each employee.

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

A day's pay is approximately $62. Thus, two more holidays would cost the City an additional $124. Viewed in isolation, the City has the ability to pay each firefighter an additional \$124. Indeed, it has offered to increase pay by \$750 per firefighter. However, any increase in payment for holidays would decrease the total resources available for appropriate wage adjustments; changing the method of payment would increase those resources.

(c) Peculiarities of Firefighting

The only peculiarity of firefighting which the Panel viewed as relevant to holidays is the need for 24 hour protection to the City of Troy. Thus, the Firefighters currently work 24 hour shifts beginning and ending at 8 a.m. Holidays, of course, are calendar days. Thus, a firefighter would work either eight or sixteen hours on a named holiday, if he worked at all. This may well explain why the almost uniform practice in firefighter contracts is to pay men for a certain number of holidays regardless of whether they are worked. No basis for discriminating between those who work different portions of a 24 hour holiday appears in the record.

(d) Terms of Past Collective Bargaining Agreements

Neither party presented any evidence to indicate that either the current number of holidays or method of payment represents any departure from long-standing practice.

Conclusion

The Panel finds no justification for changing either the number of holidays or the method of payment for them.

2. "Recall" (Article IX; Schedule C)

Currently, when the City recalls firefighters they are paid from the time the "recall is activated." That is, once the Fire Chief determines that a recall is necessary he contacts the Signal Station which then contacts the individual firefighter and records the time that this was done. Firefighters then go to their stations, pick up their gear, and report to the fire. They are paid from the time they are contacted. The City proposes changing this to paying firefighters "from the time they report to work." The Panel understands this to mean the time they pick up their gear.

(a) Comparability

No data were presented to indicate practices in other jurisdictions.

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

No data were provided to show the actual cost of paying firefighters who are recalled from the time they are ordered to duty until the time they arrive to pick up their gear. Since firefighters live at varying distances from their official stations, the cost would vary by firefighter. According to the City (Exhibit R-19), there were two recalls in 1980 and four in 1981. Thus, while there is some cost implication to the City's proposal, the actual cost involved is not ascertainable.

(c) Peculiarities of Firefighting

One of the hazards of firefighting is that since response time is critical firefighters must travel to a recall with great haste. Thus, they are exposed to greater risks than the ordinary employee who is simply commuting to work. While ordinarily employers do not pay employees for commuting time, recall is a special situation. Firefighters are not merely reporting to their stations, but rather they are responding to a fire. This is more akin to what they normally do while working than it is to commuting. Thus, it is appropriate to consider them as working from the time they are required to leave their home to respond to a recall.

(d) Terms of Past Collective Bargaining Agreements

No evidence was introduced to show that the existing language is a recent innovation.

Conclusion

The Panel finds no justification for paying recalled firefighters from the time they arrive at a station to pick up their gear. Therefore the current language, which requires payment "from the time the recall is activated," shall be continued.

3. <u>"Kelly Days" (Article XIII(ii))</u>

The current practice is to provide one Kelly Day for each thirteen weeks of the year in which an employee receives wages for seven or more weeks. The expired contract defines Kelly Days as "compensatory time off necessary to average the work weeks." The City proposes to change Section A of the Hours of Work and Overtime article of the contract to read "employees shall be entitled to compensatory time for all hours worked in excess of forty (40) straight-time hours per week, averaged on an annual basis."

(a) <u>Comparability</u>

According to the City's survey of other jurisdictions (<u>See</u>, City Exhibits 2, 2-A, 2-B) the uniform practice is to base Kelly Days on time worked. Where employees earn sick leave it is counted as time worked for the purpose of Kelly Days. Where employees have unlimited sick leave, as in Troy, sick days are not counted towards Kelly Days.

(b) <u>Interests and Welfare of the Public and the Financial Ability of the Public Employer to Pay</u>

Since Kelly Days given to employees for whom they do not represent an averaging of actual work weeks represent a benefit for which the City must pay without receiving work, eliminating them would enhance the City's ability to pay other benefits such as wages. The Panel has taken this saving to the City into account in formulating the wage recommendation.

(c) Peculiarities of Firefighting

As noted previously, one of the peculiarities of firefighting is the unusual schedule which firefighters work. In Troy, firefighters work 24 hours on and 72 hours off. Thus, in order to average the work week at 40 hours it becomes necessary to provide compensatory time off.

(d) Terms of Past Collective Bargaining Agreements

The current contract language has been in existence since 1967. In May 1980, an arbitrator interpreted the provision to mean that a firefighter who had been on extended sick leave for almost fourteen months was entitled to Kelly Days for those fourteen months upon his return to work.

Conclusion

Since Kelly Days are intended to average the work week of firefighters it is appropriate that they be based on time actually worked, in accordance with the general practice in firefighting. However, the language proposed by the City sweeps too broadly. By averaging on an annual basis, all Kelly Days would be eliminated. Therefore, the Panel determines that Article XIII(ii)D. should be changed to read:

> "Kelly Days" (compensatory time off to average the work weeks) shall be earned by each employee on the basis of one Kelly Day for each thirteen (13) weeks of the year in which the employee works for seven (7) or more weeks. Vacation days shall be counted as time worked for the purpose of calculating Kelly Days.

4. Salary and Wages Inclusive of Longevity

The City has proposed an increase of $750 in the annual salary of all bargaining unit members. This would amount to approximately a 4.4% increase for a top step firefighter. The Firefighters have proposed increases ranging from 21.43% for Ccaptains to 22.39% for newly hired firefighters, with a top step firefighter receiving a 21.58% increase. The parties limited themselves to proposed increases for a one year agreement.

(a) Comparability

Both parties offered comparisons between the Troy Firefighters and firefighters of other communities. The Firefighters used only cities with over 50,000 population; the City used cities from 32,000 to 101,000 population. The closest city in size is Binghamton; the closest city geographically is Albany. Unlike many of the other comparisons all three of these jurisdictions (Albany, Binghamton, Troy) were compared on the basis of 1981 salaries. Because of the relatively large longevity increments in the Troy contract, the disparities between top step firefighters are relatively narrow. At the five year longevity level Binghamton firefighters make $350 and Albany firefighters $485 more than their Troy counterparts. At the twenty year increment level Binghamton firefighters make $178 and Albany $98 more. All three jurisdictions are in the lowest quartile of cities over 50,000.

During the course of this arbitration the Panel was informed that the City reached agreement with its non-uniformed force on the basis of its $750 per person offer. Given the average salaries of non-uniformed bargaining unit employees, this amounts to approximately seven percent.

A further relevant factor is the settlement reached in other jurisdictions. Neither party presented data as to negotiated increases. The Firefighters indicated that arbitrated awards averaged 8.68% for the fiscal year ending in 1982. (See, Exhibit "E"). However, the average is unweighted and the sample contains jurisdictions of vastly different sizes. Because of the small sample size (8), and the lack of information as to the bargaining history of the parties, it is not extremely reliable. Indeed, if Cohoes is dropped because of its apparently high settlement of 12.36%, the unweighted average becomes 7.94%. Dropping the highest and lowest settlement gives an unweighted average of 8.2%. Thus, it appears that the unweighted range of arbitrated settlements is 7.94% to 8.68%, with the average at 8.2%.

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

The City's chief argument against a larger increase was its inability to pay any more than the $750 plus fringe benefits that it had budgeted for all employees. While the budget does indicate provision of $650,000 for "Budget Provisions for Contract Settlements" the Comptroller testified that this amount was also meant to provide raises for 130 employees not covered by contracts. It should be noted, of course, that the City may not determine the size of an increase simply by the amount it has budgeted for increases.

In 1981 Troy had a deficit of $506,000 the largest portions of which were attributable to a short fall in sales tax, a failure to collect delinquent taxes and the late arrival of State aid. In prior years there were surpluses of $585,000 in 1978, $892,000 in 1979 and a deficit of $93,000 in 1980. According to the Comptroller, the deficit was discovered too late to take it into account in setting the tax rate for 1982.

Troy currently has exhausted 74.5% of its constitutional tax margin. Over the period 1975-1981, real property tax per capita declined slightly in constant dollars (See, Exhibit "N"). On the other hand, the School Tax and County Tax increased. The full valuation of Troy property is substantially below that of Albany and Binghamton, in large part because of its 48% of property that is tax exempt.

It is clear from the data that Troy is not on the verge of bankruptcy. On the other hand, to say that Troy is on the edge of an explosion of revenues attributable to the proposed RPI-High Technology Park, as was done by an economist for the Firefighters, is speculative at best. In sum, it appears that Troy is currently suffering from an unanticipated deficit that restricts its current ability to expend but does not impair its longer term ability to pay.

(c) Peculiarities of Firefighting

Firefighters have recently begun providing a new benefit to the citizens of Troy through the Emergency Medical Service program. The vast majority of the Department has volunteered for and received training as "First Responders", and some thirteen members of the Bureau have voluntarily qualified as Paramedics. They now handle emergency situations throughout the City. While the number of fire runs made by firefighters has decreased by 12%, the Advanced Life Support Unit and other medic rigs staffed by these volunteers made over 2200 runs in 1981. We believe that this represents a unique new benefit to the City, provided by firefighters as a result of their new job training and skills. This must be taken into account in determing whether the 7% raise provided other City employees is appropriate for the Firefighters.

(d) Terms of Past Collective Bargaining Agreements

Troy Firefighters have done well in maintaining their constant dollar real wages over the past six years. While Firefighters' Exhibit "O" shows that they lost a total of $97 computed on a yearly scale and $250 computed by dates of increase in the 1975-1981 period, it does not take into account the unique longevity structure they enjoy. Every employee during that period received at least a $179 increase in longevity pay. Thus, Troy Firefighters have not had any significant reduction in constant dollar real wages during the period of high inflation from 1975 to 1981. According to uncontradicted testimony at the hearing, the predicted increase in the Consumer Price Index for 1982 is 6.5% to 7.5%. Thus, the Firefighters would need an increase in that range to maintain their constant dollar real wages.

Conclusion

The Panel finds that, absent any of the factors, an increase in the same range as the predicted increase in the Consumer Price Index would be appropriate. However, in light of the record and the statutory criteria, particularly the new Emergency Medical Service provided the citizens of Troy by the Firefighters, an increase of 8.5% is "just and reasonable." Since the Firefighters current longevity structure compares favorably with other jurisdictions, it shall remain unchanged. In light of the City's current financial constraints the increase shall be paid as follows: 3% shall be added to existing annual base salary retroactive to January 1, 1982, and payable immediately. This will create a new annual base salary to which shall be added 3% as of July 1, 1982. This will create another new annual base salary to which shall be added 2.5% as of November 1, 1982.

Dated: April 27, 1982

Norman Brand
Norman Brand
Public Member ~~and Chairman~~

Dated: April 29, 1982

J. Albert Barsamian
Employee Member

Dated: April 27, 1982

Alson J. Spain, Jr.
Alson J. Spain, Jr.
Employer Member