

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

NYS PUBLIC EMPLOYMENT RELATIONS BOARD
RECEIVED
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CONCILIATION

In the Matter of the Interest
Arbitration between

The City of Batavia

and

International Assn. of
Firefighters, Local 896

NYS PERB Case No.
IA82-50; M82-547

Pursuant to the Civil Service Law, Sec. 209.4, the Public Employment Relations Board on June 3, 1983, designated a Public Interest Arbitration Panel consisting of Jacob D. Hyman, Public Panel Member and Chairman, Ira Gates, Employer Panel Member, and Jacob Palillo, Employee Organization Panel Member, for the purpose of making a just and reasonable determination of the dispute in negotiations between the above parties.

A hearing was held before the full Panel on December 14, 1983, in the Batavia Fire Hall. The City was represented by Barry Whitman, Esq., and the Firefighters Association (hereafter the Association) by Angelo Massaro, Esq. Briefs with supporting exhibits were exchanged and submitted and were summarized orally on behalf of both parties, and some oral testimony was presented.

The members of the Panel met on December 20, 1983 in Williamsville, N.Y. to consider the evidence and the issues. Twenty-four issues had been identified as unresolved in the Association's Amended Petition for Arbitration, and the City in its response addressed each of the 24 and also added three other issues. All of the issues were addressed in the briefs or in the oral presentation of the parties at the hearing.

Considerable emphasis was placed by both parties upon the issue of ability to pay, and comparisons were made of the fiscal and tax situation of Batavia with cities of comparable size (16,000 population) in upstate New York. With respect to the issue of wages, and other economic benefits, the City presented data relating to the terms and conditions of employment of firefighters in 15 upstate cities. The Association relied in part on comparison with smaller cities in upstate New York, with particular emphasis on the cities of Dunkirk, Jamestown, Lockport, and Olean.

The City also compared the terms and conditions of the Firefighters under the previous collective bargaining agreement which expired by its terms on December 31, 1982, with the terms and conditions of employment of other City workers. The Association emphasized the comparison between the terms and conditions of employment of the Firefighters with those of the Police in the City.

1. Ability to Pay.

The Association urged that the financial condition of the City was such that it presented no bar to the granting of justifiable wage increases and other economic benefits. The City acknowledged that the evidence indicated the current financial situation to be favorable, since the latest budget showed a surplus and the City's real property tax rate was far below the allowable maximum. It emphasized, however, its evidence showing that the City was experiencing to an untypical extent the current

economic recession. It pointed out that the City's population had been declining, that the unemployment rate for both the City and the county was among the highest in the State, that the City's two largest industrial employers had recently withdrawn from the City, that real property taxes constituted only a small part of its revenue, far more reliance having been placed for some years on the sales tax, revenue from which had declined with the decline in local economic activity. The City also noted that in the near future it would have to embark upon large capital expenditures in order to repair its sewer facilities and deal with a serious landfill problem. In addition, the City presented evidence of substantial increases in tax delinquencies in the past several years. In considering the statutory factor - "the interests and welfare of the public and the financial ability of the public employer to pay" - the City insists that the Panel is required to consider more than the constitutional power of the City to raise taxes in order to grant higher economic benefits to employees; that it must consider as well the public employer's over-all fiscal situation and prospects.

Considering the evidence in the light of the statutory factor, the Panel is satisfied that the City's present and prospective financial situation is such as to make appropriate justifiable improvements in terms and conditions of employment of its 32 Firefighters.

2. Salaries.

The evidence is clear that the salary scale for Firefighters in effect under the prior agreement, which terminated December 31, 1982, was as high as or higher than that for Firefighters in comparable cities. Other City employees received no salary increases in 1983, except the police, who received, under a compulsory interest arbitration award, a 6% increase in 1983 which brought their salary scale to about the same level as the Firefighters.

It is true, as the Association emphasizes, that the police have a 20 year retirement plan, while the Firefighters have a 25 year plan. The cost of the change is estimated to be about equal to the cost of a 6% wage increase. The Association contends that this places police salaries 6% higher than those of Firefighters. This is not quite accurate, although the difference in retirement does represent a higher level of compensation for police.

Taking the difference in retirement plans into account, and the 6% increase in 1983, the police salary scale is in excess of that of the Firefighters, even without considering an increase for 1984 which may result from pending negotiations between the City and the police.

In the course of negotiations, the City expressed its willingness to change to a 20 year retirement, but only on the condition that the Association would agree to replacing the present 10/14 work schedule (4 days at 10 hours; 4 days off; four nights at 14 hours; 4 days off) with the 8 hour day, 40 hour per week work schedule in effect for the police. The City presses

this demand, even apart from the 20 year retirement issue; the question of changing the schedule will be discussed below.

There are well-recognized and important similarities between the police and firefighting professions in terms of the skills and training required, the hazards of the occupations, and the community dependence upon the faithful and efficient exercise of those skills. But they are not identical, and they are not generally regarded as being appropriately represented by the same bargaining unit. And public policy regarding collective bargaining does not condone making agreements of the one group automatically applicable to the other. Furthermore, the distinctively different work schedules now in effect for the two groups have a significant impact upon the economic elements in their terms and conditions of employment.

The record also discloses that since 1974 annual increases in Firefighters' salaries have in most years and in the aggregate exceeded the rise in the cost of living as measured by the Consumer Price Index.

In the light of the record, as briefly summarized in the foregoing discussion, the following award is made with respect to the salary scale of the Firefighters. The result will be to lessen the gap which Firefighters claim to exist between the compensation of the Firefighters and the police because of the retirement difference.

AWARD: The salary schedule for Firefighters, Lieutenants, and Captains in effect as of December 31, 1982, and currently,

shall be increased by 4% for the year 1983 and by an additional 4% for the year 1984.

3. Work Schedule.

As noted above, the work schedule for Firefighters is quite different from that of other City employees, including police: the latter are on a regular eight hour day, 40 hours a week, seven day work schedule. The Firefighters are on a 10/14 schedule consisting of four days of ten hour day shifts, four days off, four days of fourteen hour night shifts, then four more days off. Since this results in a 42 hour work week, the Firefighters during the course of the year receive 104 hours of compensatory time off. The difference in work schedules, although not necessarily in itself having significant direct economic impact, does have an impact on some supplemental economic terms.

The City urges vigorously that the Panel should provide in the new agreement that the Firefighters should be placed on the same schedule on which the police work, making two principal points. The first is that the present difference in scheduling distorts the operation of overtime and vacation benefits as between the two services. The second is that the 10/14 schedule prevents the most productive use of the Firefighters' work time; a serious result in the light of the fact that, increasingly, Firefighters are being required to spend more time on inspections, education, and other fire prevention activities, and less on actually fighting fires. The Association disputes the claim that the present schedule significantly interferes with the

efficient use of Firefighters in fire prevention work.

Even if the City's point were more clearly demonstrated, it would not appear to be appropriate on the present record, especially the lack of detailed attention given to the impact of the proposed schedule change, to impose such a change in a long-established work schedule in a new contract imposed through an arbitration award. An eight hour day and forty hour week for a job which requires 24 hour seven day coverage creates numerous problems as to work assignments, especially regarding night and week-end work. Such a change would appear to call for extensive consideration by the parties as to the possible ways of dealing with the problems, as well as the basic idea. If such a change were to be imposed, rather than negotiated, a much more complete exploration of the potential problems would seem to be called for than the present record discloses.

AWARD. The City's request for the imposition of the five day 40 hour work schedule on the same basis as the Police Officers' present schedule is denied. The present schedule shall remain in effect.

4. Call-In Pay and Overtime.

The prior agreement calls for straight time pay for overtime. For emergency call-ins, second alarms, Firefighters now receive a minimum of two hours pay and two hours of accumulated time. The Association requests time and one-half for all overtime plus a minimum of two hours pay for emergency call-ins. The City contends that the change is not warranted in view

of the comparatively high salary scale of Batavia Firefighters. The Association relies on the fact that most comparable cities do pay time and one-half for emergency call-ins. Furthermore, compensatory time off adds to scheduling problems rather than easing them.

AWARD: Firefighters shall receive time and one-half for hours on emergency call-ins with a minimum of two hours pay.

5. Clothing Allowance.

The Association asks for a \$300 annual uniform allowance for each Firefighter. Art. II, Sec. 5 of the prior agreement provides for an annual uniform allowance of \$60, an amount which has been in effect for some years. Par. (b) of that section provides that members "shall maintain proper uniform and dress while on duty in accordance with departmental rules and directives". Despite the broad discretion apparently given to the Department to prescribe dress, the City maintains that dress uniforms have never been required. However, the broad language should be deleted. And it is clear that under present economic conditions, the amount of the allowance is insufficient.

AWARD: The City shall provide each Firefighter with two fatigue uniforms each year. Any future request by the City to require dress uniforms shall be negotiated. Pars. (b) and (c) of II(5) of the prior agreement shall be deleted, except for the provision that Firefighters shall be required to replace worn or damaged uniforms during the course of the year.

6. Night Work Differential.

The Association requests a night shift differential of 30 cents an hour. Such a differential is not found in most agreements with Firefighters in comparable cities. In view of that fact and the further fact that under the new agreement the Firefighters are to retain their present 10/14 schedule, no sufficient justification for the request is apparent.

7. Vacations

a. Schedule

The prior agreement has a lengthy and complicated vacation provision. Briefly, it calls for two weeks vacation after one year of service; three weeks after five years; and, after 12 years, an additional one day per year to a maximum of four weeks. The Association requests that the schedule be changed to provide four weeks after 12 years and five weeks after 18 years. The City urges that the present schedule be kept except that five weeks vacation be given after 20 years. This would make the vacation schedule substantially equivalent to that in effect in comparable cities.

AWARD: The prior vacation schedule shall be continued except that after 20 years of service Firefighters shall receive five weeks of vacation.

b. Other Vacation Provisions

Par.(c) of Art. II(3) sets forth a detailed method whereby Firefighters on the basis of seniority can select vacation times,

with a special provision for the selection of vacation times which include Easter, Thanksgiving, and Christmas. The Agreement also specifies that during June, July, and August two Firefighters may be on vacation at the same time from each platoon; during the remaining months only one at a time unless the Chief allows more than one. A vacation week is defined as equal to four scheduled 10 hour or 14 hour workdays. Firefighters are permitted to exchange one week of their vacation "or other time off" with the approval of the Chief, who must give his reasons in writing if he refuses.

The City asserts that the foregoing provisions for determining vacation times are too rigid and interfere with efficient deployment of the force. It requests replacement of the present provisions with a provision giving the Chief discretion to schedule vacations.

The management clause in the prior agreement, Art. I, Sec. 4, includes the right, among other matters, to select and direct the force and to assign members of the force. But for the very specific language of the vacation clause, the management clause would unquestionably give the Chief considerable discretion reasonably to establish vacation schedules. The privilege enjoyed by the Firefighters to have their vacations in the summer is one not to be given up except for compelling reasons.

In the judgment of the Panel, the needs of the Department would be fully protected, and summer vacations preserved as much as possible, if limited discretion were given to the Chief regarding vacation scheduling similar to the manner in which the

prior agreement gives him discretion in regard to exchanges of vacations and time off.

AWARD: The 4th paragraph of Sec. II(3)(c) shall be amended by adding to the first sentence the following: "except that the Chief may, for reasons set forth in writing, limit to one the number of Firefighters who are to be on vacation in specified weeks of those three months".

8. Time Off For Union Activity.

Article III provides in Sec. 3 for leaves of absence for as much as one year to serve in an elected position with the Union, and in Sec. 5 for no loss of pay by members of the Union negotiating team while attending negotiation sessions.

The Association requests for local Union representatives ten days off each year for State and International Union meetings, and 10 hours off each week to attend to local Union business.

In view of the amount of time available under the 10/14 schedule, no adequate justification has been shown for the additional compensated time away from the job.

AWARD: No change shall be made in the provisions making provision for Union activity.

9. Health Insurance.

Art. II, Sec. 10 of the prior agreement reads:

10. Hospital Benefits.

a. The City will assume the full cost of the Blue Cross/Blue Shield 50/51 plan with major medical. This will include all future retirees including retirees presently covered who are eligible under the New York State Retirement Plan. The City will assume the full cost of the Prescription Drug Program (Rider #8 \$1.00 Co. pay) for all members of the bargaining unit.

The City requests that the second sentence be deleted, since PERB has ruled that such benefits are not a subject of mandatory bargaining, and it declines to negotiate the question. The City also requests that the first sentence be changed to substitute the City's present health insurance program for Blue Cross/Blue Shield. This covers all other City employees, is self-insured, and is administered by Healthcare Administrative Services of N.Y., Inc. It declares that the level of benefits is fully equal to that under the now superseded Blue Cross/Blue Shield plan incorporated in the prior agreement. The City's plan is insured for catastrophic losses and the plan itself and a resolution of the City Council guarantee its equivalency with the 50-51 plan. The City further gives assurances that no loss of benefits would be experienced by the Firefighters, whereas substantial savings would be realized by the City.

The Association opposes the change on the ground that the equivalency of benefits is not assured. It refers to a decision by the New York State Supreme Court, Genesee County, in June 1982, which granted a preliminary injunction against the City's

attempt unilaterally to make the change. In enjoining the change, the Court relied primarily on the fact that the collective bargaining agreement then in effect provided specifically for the Blue Cross/Blue Shield 50-51 Plan, and the change would thus be in violation of a provision specifically agreed to. The Court did note that there was some disagreement about the identity of coverage under the two plans, but also noted that the resolution by the City council provided assurance that equality would be maintained.

AWARD: The second sentence of Article II, Sec. 10(a) shall be deleted. The first sentence shall be amended to read:

The City shall assume for Firefighters the full cost of the HASNY Plan, benefits under which shall be maintained substantially equal in coverage to the Blue Cross/Blue Shield 50/51 Plan.

10. Number of Holidays.

Art. II, Sec. 1 of the prior agreement provides for 11 holidays with pay. The Association requests that the number of paid holidays be increased to 12 by adding St. Patrick's Day.

The City points out that St. Patrick's is not a national or a state holiday and that it finds nothing to indicate that other city employees are paid for it.

AWARD: There shall be no increase in the number of paid holidays.

11. Holiday Pay.

A related issue is the computation of pay received by Firefighters for paid holidays. Under the prior agreement, holiday pay for Firefighters, like that for other City employees is computed on an eight hour basis, although the Firefighters work either a 10 or 14 hour day. As the City points out, they receive the same number of hours of holiday pay as the other City employees. However, when Firefighters work on a holiday, they work 10 or 14 hours depending on their place in the schedule, but receive only eight hours pay. The Association asks that they be paid for ten hours. The Association does not follow the logic of their claim to the point of asking that they be paid for 14 hours when they work on a holiday which occurs when they are on the 14 hour part of their schedule. To compensate them in that way would create apparent inequities with respect to the other employees, as well as among Firefighters.

The Panel is satisfied that there is no persuasive reason to change the present method which provides an equal number of hours of holiday pay over the course of a year for all employees.

AWARD: The provision of the prior agreement for determining the amount of holiday pay shall be continued.

12. Longevity Increments.

Appendix A to the prior agreement provides for a longevity bonus of \$100 after five years of service, \$200 after ten years, \$300 after 15 years, and \$400 after 20 years.

The Association requests that this be changed to \$100 after five years, and \$25 additional for each year thereafter, with a maximum of \$475 after 20 years. Two facts are relied upon in support of the request. First, longevity increments have not been increased since 1971. Second, that the Police receive \$500 after 20 years.

The City notes that other City employees have the same longevity scale as Firefighters. It also refers to longevity compensation for Firefighters in comparable cities. But of the eleven cities referred to, seven have higher payments than Batavia.

On the basis of these facts, it appears that some increase in longevity increments is called for.

AWARD: Longevity increments for Firefighters shall be increased as follows: after five years service, \$200; after ten years, \$300; after 15 years, \$400; after 20 years, \$500. The increased increments shall be effective for 1983 and 1984.

13. Payment for Emergency Technician Services.

The City of Batavia has no paramedical service. It has been the practice for a fire engine to respond to an emergency call when no ambulance is available. While all Firefighters are required to have first aid training, they are not required as part of the job requirement to have Emergency Medical Technician Training, although seven in fact have it and two are currently certified. Testimony at the hearing was somewhat confused as to the situation in comparable cities and also as to the exact scope

of the additional assistance which can be provided. It was clear, however, that the additional training makes possible more extensive emergency treatment than is possible with the basic first aid training which is required for the job. It was also clear that the Batavia Fire Department did respond to a substantial number of emergency calls each year.

In the light of these facts, it appears to the Panel that the public interest and welfare are served by rewarding the voluntary effort of some Firefighters to broaden their skills relevant to a function which in the line of duty they are called upon to perform.

AWARD: Firefighters who maintain certification for Emergency Medical Technician Treatment during the calendar year shall be paid \$100 in December of that year. This shall be applicable to the years 1983 and 1984.

14. Fire Monitors.

At its own expense, the City has installed and maintains in each Firefighter's home a radio monitor which can be used to call Firefighters in an emergency. The installation does not involve any greater obligation on the part of Firefighters to be at home than would otherwise be the case.

The Association requests compensation for the presence of the monitors. No clear justification for the request has been presented.

AWARD: The agreement shall not include any additional compensation for call monitors which are provided and maintained by the City in the Firefighters' homes.

15. Sick Time.

The Amended Petition raises three distinct but related matters concerning absences because of illness and compensation associated with them. The prior agreement provides, in Art. 2, Sec. (2)(a), for one sick leave day per month which may be accumulated to a total of 100 days, each day of paid sick leave to be deducted from the accumulated sick leave. In addition, the Appendix provides that retirees shall receive, upon retirement, \$5.00 for each day of unused accumulated sick leave.

The Association requests that the amount of sick leave be increased to one and one-half days per month with no limit, and that upon retirement the Firefighter shall be paid for 30% of his unused accumulated sick leave at his "normal daily rate of pay at that time".

The City proposes that the accumulation rate be changed to 12 hours for every 192 hours worked, with no accrual for hours not at work, and with a maximum of 1440 hours. The reason for the request is that the City believes the present method to be inequitable with respect to other City workers who receive eight hours of pay for a sick day, whereas Firefighters receive ten or fourteen hours of pay depending on which shift they miss, but are charged with only one day's sick leave.

The hourly basis proposed by the City, along with the requested deletion of Par. (b) of Sec. II(2) - a rather unclear limitation on sick leave - would involve a radical departure from the established basis for sick leave, and would be contrary to the almost universal practice of comparable communities. The comparable data does not, however, support the Association's request for an increase in the number of sick days earned per year.

The Association presses even more strongly its request for a 30% payment on retirement for unused accumulated sick leave instead of the present \$5.00 per day. The City vigorously opposes the idea of any cash payment on retirement for unused sick leave accumulation as being in conflict with the basic purpose of sick leave pay. The Association urges, on the other hand, that such a cash payment discourages unnecessary use of sick leave.

Whatever the merits of this principled debate, practice among Firefighters is well established, and the changes requested by the City would be better negotiated in relation to other miscellaneous benefits. On a comparability basis, given the widespread prevalence of the practice, the \$5.00 allowance in the prior agreement is clearly inadequate, even taking into account the City's point that the Firefighters receive 10 or 14 hours of sick pay for each day of sick leave taken.

AWARD: The number of days sick leave accumulated and the maximum accumulation shall remain as in the prior agreement, but

the cash payment upon retirement shall be 20% of the daily pay at the time of retirement and shall be based on an eight hour day.

16. Sick Bank.

The prior agreement had no provision of this nature. The Association requests the creation of a "sick bank" by the deposit of one day per month per Firefighter. No persuasive basis for the request has been presented.

AWARD: The agreement shall not include any provision for a sick leave bank.

17. Memorial Day and Veterans Day.

The Association requests that any veteran required to work on either of those holidays should be given an additional day's pay or an additional compensatory day off. The City answers that the inclusion of both days as paid holidays in the prior agreement and the requirements of Sec. 63 of the New York Public Officers Law, with which the City is complying, fully satisfy the request. No rebuttal of this answer has been advanced.

AWARD: The new agreement shall contain no additional provisions regarding Veterans Day and Memorial Day.

18. Personal Leave.

No personal leave is provided for in the prior agreement. The Association requests five such days. The City states that no other City employees have personal leave, and that the Firefighters' work schedule gives them more days for personal

matters than other employees enjoy. No persuasive justification for new personal leave days has been presented.

AWARD: The new agreement shall not provide for personal leave days.

19. Out-of-Title Work.

The Association requests, first, that Firefighters acting as officers be paid at top grade applicable to the position being filled. Art. II, Sec. 6 of the prior agreement provides for compensation in such cases "according to the City pay plan for working in that position." No adequate reason appears for changing the compensation which has been worked out under the provision in the prior agreement.

As for the assignment of Firefighters to maintenance work in and around the equipment and fire halls, this would appear to fall within the City's management prerogatives to assign work. In view of the amount of time that the Firefighters are simply on call, it does not appear that the assignments represent an unreasonable or arbitrary exercise of that authority.

AWARD: The new agreement shall not include any changes in the provisions of the prior agreement relating to work assignments.

20. Bereavement Pay.

No change in the present practice is requested, but the City does request that that practice be spelled out in the new agreement in more detail than is found in Art. II, Sec. 2.1 of

the prior agreement. No objection to this proposal has been indicated.

AWARD: The new agreement shall include the following language in place of Art. III, Sec. 2.1:

a. Members of the Association may be absent up to three regularly scheduled work days without loss of pay in case of death in the immediate family.

b. Immediate family shall be defined as parents, spouse, children, brothers, sisters and immediate in-laws.

c. Bereavement leave shall be three consecutive work days beginning on the date of death. Bereavement leave which begins in a prior work shift shall not carry forward into the subsequent work shift. Bereavement leave which begins on a regularly scheduled day off shall end on the date of the funeral.

d. Members of the Association may be absent one regularly scheduled work day for the funeral of a grandparent residing with the member at the time of death.

21. Associate Degree in Firefighting.

The Association requests that Firefighters who receive an Associate Degree in Firefighting shall receive an additional 2% of their base salaries. The City challenges the justification for this in view of the fact that it now pays tuition for all City employees for courses which are directly related to their job requirements. It also notes that only two of the comparable cities reviewed make such payments, and that no present Firefighters hold such a degree.

AWARD. The City shall continue its practice of paying tuition for job related courses leading to a degree.

22. Benefits on Resignation.

The City requests that the present provision for the payment of various benefits to Firefighters resigning, as well as those retiring, should be deleted. Par. 3 of Sec. 3 of Article II, of the prior agreement, reads:

All members of this Association, upon retirement or voluntary termination of their employment after four (4) years of service shall receive all vacation, holiday, accumulated time and longevity pay accrued to date of retirement or voluntary termination of employment.

No persuasive reason has been advanced for the elimination of this established benefit, which reflects a common premise in labor relations that fringe economic benefits are earned as they accrue in the course of employment.

AWARD: The new agreement shall include Art. II, Sec. 3, par. (e) in its form in which it appeared in the prior agreement.

In addition to the matters discussed above, the City requested several changes in the prior agreement.

23. Definition of Grievance.

While the prior agreement contains in Article IV a detailed grievance procedure, including binding arbitration by a tripartite Grievance Board, there is no definition of "grievance".

AWARD: The following sentence shall be inserted after the first sentence of Article IV of the prior agreement:

A grievance shall be any claim of a violation, misinterpretation, or misapplication of any

provision of this agreement.

24. Lieutenants and Captains.

When the prior agreement was entered into, Fire Lieutenants and Captains were included within the bargaining unit represented by Local 896. They have since withdrawn from that bargaining unit and are now represented by another.

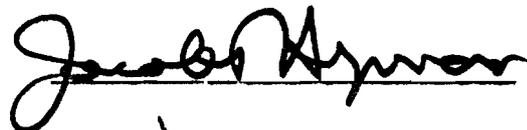
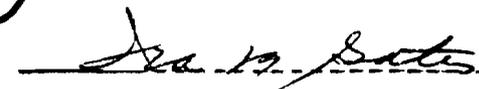
AWARD: References to Lieutenants and Captains as recipients of benefits shall be deleted from the prior agreement.

25. Term of Agreement and Relation to Prior Agreement.

This agreement shall be in effect from January 1, 1983 to and including December 31, 1984, and shall include all provisions of the prior agreement except as specifically excluded or modified by the foregoing awards.

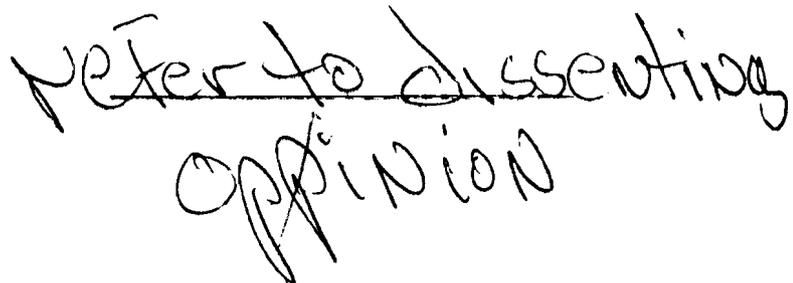
Buffalo, N.Y.
January 30 1984

Batavia, N.Y.
January 31 1984

I dissent from the foregoing award.

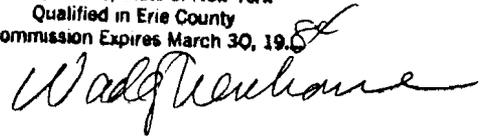
Niagara Falls, N.Y.
January 1984



State of New York)
County of Erie) ss.

On this 30 day of January, 1984, before me personally came and appeared Jacob D. Hyman, 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.

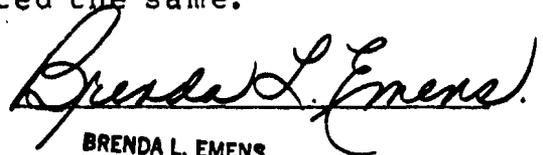
WADE J. NEWHOUSE
Notary Public, State of New York
Qualified in Erie County
My Commission Expires March 30, 1985



State of New York)
County of ~~ERIE~~ GENESEE ss.

On this 31 day of January, 1984, before me personally came and appeared Ira Gates 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.

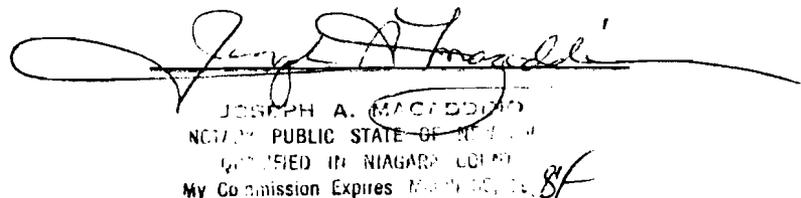
BRENDA L. EMENS
Notary Public, State of New York
Qualified in Genesee County
My Commission Expires March 30, 1985



State of New York)
County of ~~Erie~~ NIAGARA ss.

On this 15th day of January, 1984, before me personally came and appeared Jacob 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.

JOSPH A. MACADDINO
NOTARY PUBLIC STATE OF NEW YORK
QUALIFIED IN NIAGARA COUNTY
My Commission Expires March 30, 1985



I am dissenting from this award because of its internal inconsistency vagueness of the interpretation of the issues and failure of the Panel Chairman to include me in the writing of this "City Award".

The award on salaries and the justifications are contradictory, for example, on page #4 second paragraph, Mr. Hyman admits that there is a 6% cost difference because of the different retirement plans and then in the last sentence of the paragraph he says its not quite accurate.

In the third paragraph on page #4, he again admits that because of the 6% 1983 increase the Police received, plus the 20 year retirement plan, the Police salaries would be in excess of the Fire Fighters, that could further be increased by the Police 1984 negotiations.

On page #5, he says, "And Police policy regarding collective bargaining does not condone making agreements of the one group automatically applicable to the other". I question this because on page #5, third paragraph, Mr. Hyman states that his salary award is to lessen the gap that the Fire Fighters claim to exist with the Police. (The other group).

In reviewing his summary of the salary award, first he says the Fire Fighters are right, then he says its not quite accurate, then he says that under public policy, you shouldn't make an award that would effect another group, and then he concludes with making an award that lessens the salary gap (with another group) that the Fire Fighters claim exist, after he has admitted as fact that it does exist.

His 4% wage adjustment for 1984 will definitely have an impact on the Police negotiations for 1984 because he admitted in the one discussion that I was privileged to have, that any salary adjustment for 1984 would be the yard stick that the City would use in dealing with the Police in 1984 negotiations.

His 4% award put the City of Batavia in the driver's seat against the Police. Now their agreement to them is you can't get more than the Fire Fighters.

This is exactly what the City was proposing. Mr. Hyman obliged by agreeing and then tried to cover it up with a smoke screen of contradictions.

On the issue of Health Insurance, Mr. Hyman played into the City's hand by changing the meaning of Blue Shield/Blue Cross coverage, by his own interpretation of PERB'S meaning of mandatory, non-mandatory subjects.

PERB says that it is mandatory subject to negotiate for benefits for future retirees but is non-mandatory to negotiate for additional benefits for present retirees. It also allows for a non-negotiable subject to be discussed if both sides agree. In dealing with this issue when the Panel held the one meeting that I was privileged to attend, I requested that this item be removed from further discussion because of it's pending litigation in the Courts, PERB'S ruling that forbid this type of action and the City's failure to submit evidence in writing as to the guarantee of its claim, that the present coverage would not be reduced.

On page #13, Mr. Hyman noted that the City's Council Resolution provided assurance that equality would be maintained.

In his award he amended this resolution by saying the benefits under which shall be maintained substantially the same changes the meaning of the City's Resolution.

Special note that not all City employees are covered under the new plan as Mr. Hyman referred to. This again is something Mr. Hyman accepted on Mr. Gates's word without proof.

On the work schedule change that was proposed by the City, it was rightfully denied but not for the reasons stated. Mr. Gates once again was proposing a change minus substantial evidence. He did not present a schedule change in writing that the Panel could have reviewed and discussed on its merit. He was selling an unknown issue with only a promise that it was best for all involved. Mr. Hyman only addressed this issue to justify his not awarding the 20 year retirement plan. Mr. Hyman would have awarded to 20 year retirement plan if I would have bought Mr. Gates's pig in the poke schedule change.

The award for call-in pay is to vague. It states that only emergency call-ins will warrant time and one-half. What happens if the City wants to deem an emergency as a normal overtime call-in for staffing purposes?

The clothing allowance award and change was proposed by me as part of my total proposals of the total award and not to be piece-mealed.

Mr. Hyman arbitrarily took this out of context and soured the milk of this proposal by the last sentence of his award. By requiring the Fire Fighters to replace worn or damaged uniforms this could very well impose an unjust burden of cost on them by a Chief who might want them tucked ready for a fight. When are the provisions that cover damages that occur at the fire scene and at the fire station? What will determine the extent of the meaning of the words worn or damaged?

The number of hours of location was a result prior to arbitration, except that in the scheduling of location of a case Mr. Hyman acted beyond his scope of an arbitrator and became a judge. This case is currently in the hands of P.R. to determine because the award has not been filed at P.R. change to award P. C. Hyman.

Mr. Hyman's award on this case is a result of his own will and not a result of the law. He has acted beyond his scope of an arbitrator and become a judge, as a result of this award. The award is not a result of the law but a result of his own will. The award is a result of his own will and not a result of the law.

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In summarizing my dissent of this "City Award" it is evident that Mr. Hyman and Mr. Gates acted out of their jurisdiction as arbitrators, by taking the Court and PERB decision making policy out of their hands to justify the City demands.

As a Panel member, I met once with the full board and spoke to Mr. Hyman twice by phone. In considering this award and its one sidedness it is evident to me that a great deal of dialogue must have taken place between Mr. Hyman and Mr. Gates that I was left out of.

Mr. Hyman's statement throughout this award that referred to "The Panel decided" is untrue, because I had no part in deciding this award. Mr. Hyman wrote it to Mr. Gates satisfaction and they both signed it.

On January 31, 1984 I received two mailings by certified mail that contained copies of this award. One mailing from Mr. Gates and one mailing from Mr. Hyman. The date set for me to sign was January 31, 1984. It is quite a coincidence that they both sent me certified mail on the same day and set the date for me to sign, on the date that I was receiving an award, that I had not seen before.

In writing this award Mr. Hyman needed a second vote and this is where I question very seriously the colaboration between the two that left me out in the cold and unaware of the context of this award.

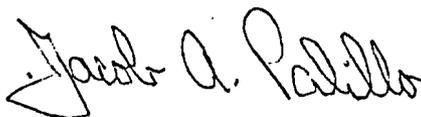
I charge Mr. Hyman and Mr. Gates with actions that were biased and self serving and both should be barred from serving again on any other Panel. Another special note is that Mr. Gates made it very clear to Mr. Hyman when the Panel met that after 23 years of service his job would be in jeopardy if the award wasn't to the City's liking.

Its very clear also that because of this "City Award", that thanks to Mr. Hyman, Mr. Gates's job is secured until the next contract negotiation, and as for Mr. Hyman, he should apply for a Supreme Court Judgeship because he certainly didn't act as a neutral arbitrator in writing this award.

My recommendation to the Fire Fighters group is to ask for judicial

review of this "City Award" and call for a new hearing free of biased collaboration.

Respectfully submitted,

A handwritten signature in cursive script that reads "Jake A. Palillo". The signature is written in dark ink and is positioned above the typed name.

JAKE A. PALILLO

Dissenting Member.

NOTE: A mediation Hearing was held prior to arbitration and the PERB assigned mediator recommended 8% for 1983 and 7% for 1984.