

NYS PUBLIC EMPLOYMENT RELATIONS BOARD
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In the Matter of an Interest Arbitration between
City of Batavia, New York

- and -

International Association of Firefighters

Case Number: NYSPERB IA85-4, M84-522

Opinion
and
Award

FOR THE CITY

William Reemsten, Assistant to the City Administrator

FOR THE UNION

- Steve Pratt, President
- Larry F. Smith, Lieutenant
- Charles Bordinaro, Vice President
- Stephen Sutay, Member
- Michael A. Rimmer Sr., Member

ARBITRATORS

- Nicholas Sargent, Union Appointed Arbitrator
- Ira Gates, Employer Appointed Arbitrator
- Donald P. Goodman, Public Member and Chairman

The parties negotiated to impasse over the impact of a reduction in staffing of the firefighters. As a result the above named arbitrators were designated to issue an interest arbitration award on the unresolved issues. An oral hearing was held in Batavia, New York on August 15, 1985 at which time the parties were provided ample opportunity to introduce evidence, present testimony and to summon witnesses and engage in their examination and cross-examination. The oral hearing was concluded on August 15, 1985 and the record closed. Thereafter the arbitration panel met in executive session and issued this Award and Opinion.

BACKGROUND

For some years the City manning table included 32 firefighters. In addition, there were other members of the Fire Department including Lieutenants and Captains. As a result of several factors, the number of firefighters was reduced to 28. The parties recognized that manning was not a subject of mandatory bargaining but rather was a matter of management perogatives, however, the impact of manning reductions was another matter. This impact was negotiated to impasse. Thereafter mediation occured resulting in a tentative agreement. When the mediated settlement was presented to the City Council concurrence or approval by that body did not occur. As a result the matters were presented to the instant arbitration panel which was convened pursuant to Section 209.4 of the New York State Civil Service Law. That section requires the Arbitration Panel, in reaching its decision, to consider:

a. The comparison of the wages, hours and conditions of employment of the employees involved with the wages, hours and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions with other employees generally in public and private employment in comparable communities.

b. The interests and welfare of the public and the financial ability of the public employer to pay

c. Comparison of peculiarities in regard to other trades or professions including specifically

1. hazards of employment
2. physical qualifications
3. educational qualifications
4. mental qualifications
5. job training and skills

d. The terms of collective agreements negotiated between the parties in the past providing for compensation and fringe benefits, including, but not limited to, the provisions for salary, insurance and retirement benefits, medical and hospitalization benefits, paid time off and job security.

In reaching its conclusions and making its award, the Arbitration Panel has diligently considered all of the above criteria.

It should be noted that the International Association of Fire Fighters Local is one of five bargaining units in the City. The population of the City is about 16,700. Batavia is the county seat of Genesee County.

ISSUE I SALARY

ASSOCIATION POSITION

As a result of the reduction in manning from 32 to 28 positions, the remaining employees face additional hazards and increased workload. To compensate therefor the Union requests a 5% salary increase. The additional work and hazards is evident when staffing levels per piece of apparatus is considered. Prior to the reduction in manning ten men were in each platoon with three men on the aerial truck. Now two men ride the aerial. Obviously this increases the risk for firefighters and decreased firefighting effectiveness. In the City of Buffalo four men are assigned to an aerial truck. A survey of 73 fire departments reveals an average of 4.6 men per aerial truck.

In like manner, under the ten man platoon two men rode the back of a pumper which allowed two men to enter a burning structure with a hose line. With the reduction in manning only one man rides the back of the pumper. As a result the officer must assist the man on the back of the pumper thus delaying a proper evaluation of the situation. The driver must remain with the truck to monitor the operation of the apparatus. Again, a survey of 73 fire departments reveals average manning of pumpers or engines as 4.1 men. This delay in evaluating a situation certainly increases the hazards. For every increase of 18 degrees Fahrenheit in the atmosphere surrounding a fire, the combustion process doubles. In six minutes a fire

will increase 16 times. A firman must cope with this added risk increasing his efforts. He attempts to raise ladders alone and pull hose without help. This increases stress and causes some loss of caution. Too, reduced manning increases the amount of overtime worked thus also tends to result in an overworked and overtired work force. For example, in 1983 with 40 men there was no overtime. From January 1, 1985 to the date of the arbitration oral hearing some 256 hours of overtime was scheduled.

We also find that the number of calls responded to by the fire department has been steadily increasing since 1981. This may be partly as a result in the reduction in fire prevention activities. With the reduction in the number of firefighters the amount of time available for fire prevention activities has decreased. The probability is that as fire prevention matters decrease the amount of calls increases.

There is no doubt but that the City can afford the 5% increase. In fact the City offered a 5% increase if the Union would accept a three platoon system. Too, the City, in mediation, agreed to a 5% increase. The increase which was mediated was not approved by the City Council.

CITY POSITION

The argument of the Union concerning the increased risks as a result of manning reductions is misplaced. A fireman performs

many duties other than actually fighting structural fires. Over the past six years the number of structural fires has decreased from 46 in 1979 to 33 in 1984 with 17 in 1985 through July. This is partially as a result of the destruction of blighted and vacant buildings due to urban renewal. Too, it should be remembered that no fireman works all of the time thus the number of fires actually fought by any one man is much, much less than the number responded to by the Department. In fact in 1984 an individual fireman would have responded to an average of 7.92 fires or once each 46.09 days.

The seriousness of a fire may be judged, in part, by the number of second alarm fires. In 1984 there were only two second alarms. Not only is very little time actually spent responding to structural fires but also very little time is spent responding to any alarm. In 1984 a fireman, on average, spent only 57.1 hours actually responding to alarms.

It should be noted that the minimum staffing per platoon has not decreased. The minimum staffing was eight and still is eight although at times 9 or 10 men were on duty. Because of vacations etc. eight men were frequently on duty without expression of safety hazards by the Union.

Too, the Union recently supported a proposed rescue squad. The Union stated it could provide such a service within existing manning levels.

Any salary award based on reduced manning would be premature. The City Council is currently deliberating staffing of the Fire Department. If a salary increase is awarded and the Council increases manning the salary increase would be inappropriate.

CONCLUSIONS

The City has stated that Union comparisons of the City of Buffalo and the City of Batavia are not appropriate. The Panel recognizes that the economic, sociological, political and demographics of Batavia and Buffalo are different just as are the ethnic and racial characteristics. So too may be the number of residents, residences, commercial establishments and heights of buildings. Nevertheless some characteristics are sufficiently similar to be noted. But comparisons were made not only to Buffalo but also to a large number of other municipalities.

Certainly very little of a fireman's time is actually spent fighting structural fires but that is not controlling. If there were not a single structural fire in the City in a given year would this lead to the conclusion that the Fire Department should be abolished? Of course not! Just as a home owner would not cancel house insurance because he had not needed to file a claim. When a fireman enters a burning structure regardless of how infrequent that may be, he should not enter alone. Because of current manning, the officer

on duty must assist a fireman thus reducing the amount of time available to evaluate the situation.

The ability to pay is a factor which must be and is considered by the Panel. The Panel notes that (1) the City proposed a 5% increase if the Union would agree to a three platoon system and (2) the City negotiator, in a mediated settlement did not agree to an increase. There has been no suggestion or argument that the City could not afford the increase.

The Panel takes note of the fact that fireman respond to trash, grass, motor vehicle and other fires as well as to false alarms. Like many other communities, Batavia streets carry a large number of trucks containing gasoline and various chemicals. Major United States and New York State highways go through the City.

The Panel takes special note of the deliberations in City Council concerning manning levels. It should be noted that prior to March 1983 the complement of the Department included 32 firemen. One retired at that time and in 1984 three were promoted to officer status. Throughout 1984 the City Council discussed and debated staffing. In December 1984 a committee of four citizens, one firefighter, one fire officer and one retired fire officer was established to consider staffing. In June 1985 the committee recommended the staffing be at 28 firemen. We find then that for over a year the Council in one form or another has considered staffing and even

several months after the committee rendered its report, the Council still has not made a determination on staffing. Such a decision might be made tomorrow or years from now. The City raises the matter that if a salary increase based on the impact of reduced staffing was made and then staffing was increased the awarded increase would be inappropriate.

The Panel AWARDS a 5% salary increase effective September 1, 1985. This 5% increase will be reduced by $1\frac{1}{4}\%$ for each additional staffing level above 28 until a level of 32 is reached. For example, if staffing is increased to 30 the 5% would be reduced to $2\frac{1}{2}\%$. At a level of 32 the 5% would be reduced to zero.

ISSUE II. Vacation Buyback

Union Position

The Union proposes that members have the option of converting up to two weeks of their vacation to salary each year. It argues this would tend to increase the number of men on duty at any one time thus benefiting the City and its residents. Some of the same justification presented on the salary issue is applicable here.

City Position

Again some of the matters applicable on the salary issue are also germane here.

Conclusions

The Panel is unconvinced that vacation buy back would not benefit the City. This would tend to increase the number of firemen on duty. The Panel AWARDS that employees have the option of converting up to two weeks of vacation to salary each year. In the last year of employment employees to have the option of converting any amount of vacation to salary.

ISSUE III. Add Sections f, g, and h of the NYS Retirement System
City Position

Arguments are the same as the preceding issues. The City is opposed to the granting of this proposal. The sections permit members to remain on duty past 25 years service to collect larger retirement benefits. This is an incentive not to retire after 25 years. It is in the best interests of the City and the firefighter to retire after 25 years because of the physical requirements of the job. After 25 years service physical ability tends to decrease. As physical decreases the dangers to the fireman and others increases.

Union Position

The arguments advanced earlier apply. Too, the City provides these benefits to policemen. The physical ability argument would seem to be equally applicable to policemen. There simply is no logical reason not to grant the benefits.

Conclusion

Although as part of the mediated settlement, this Panel is unconvinced that retaining firemen past 25 years service is in

the best interests of firemen, the City or the residents. Even though policemen have been extended the benefits, this does not necessarily mean they should be extended to firemen. This Panel does not make an **AWARD** granting the benefits of Sections 384 f, g and h.

ISSUE IV. Retirement Incentives

City Position

See comments regarding the preceding issues.

Union Position

See comments regarding the preceding issues.

Conclusions

The Panel **AWARDS** that employees have the option of converting up to five weeks vacation in the final year of service to overtime pay. Overtime pay for this purpose shall be computed as annual salary divided by 52 for each week of converted vacation time.

General

The Panel is convinced that its award duly considered all those factors required by Section 209.4 of the New York State Civil Service Law.

STATE OF New York

COUNTY of Genesee

We do hereby affirm upon our oaths as Arbitrators that we are the individuals described in and who executed this instrument, which is our award.

Dated October 22, 1985

Nicholas Sargent
Nicholas Sargent
Union Appointed Arbitrator

Ira Gates
Ira Gates
Employer Appointed Arbitrator

Donald P. Goodman
Donald P. Goodman
Neutral and Public Member
Arbitrator
Chairman of the Panel

DISSENT

Ira M. Gates

DISSENT

PERB CASE NO: IA85-4, M84-522
INTEREST ARBITRATION (IMPACT OF MANNING)

Because of what I consider serious factual and analytical errors in the award issued by Donald P. Goodman, Public Member and Chairman, and Nicholas Sargent, Union Appointed Arbitrator, I strongly dissent. I am disappointed in my inability to convey to either of the other two panel members of these shortcomings.

Before turning to the award itself, I think it is important to state for the record certain facts, which are in my opinion seriously at issue.

For some years, the City employed four ten-men platoons consisting of fire fighters and fire officers. Two of these platoons were on duty on any particular day (one covering the night shift and one covering the day shift), while the other two platoons were off duty. Although each platoon technically consisted of ten men, because of vacation, so-called "Kelly Days" and other time off, there have typically been eight or nine fire personnel on duty, with a minimum staffing requirement of eight employees. This meant that two employees were available to operate the department's aerial truck, while the two pumper trucks were each operated by three employees, except that when nine employees were on duty the extra employee would ride on one of the pumper vehicles.

With the current reduction of fire personnel of four employees, the previous minimum staffing level of eight will continue to be observed, with two employees operating the aerial truck and each of the two pumper vehicles operated by three employees each.

In short, against these uncontested facts the day to day impact of the decision to operate with four fewer employees may be seriously questioned. It is important to keep in mind that the number of fires in the City has continued to decrease virtually each year, dropping from 46 in 1979 to 33 in 1984.

It is also of obvious practical significance that the Union had recently offered to accept additional duties through the formation and operation of a rescue squad, without additional wages and within existing manning levels.

The analysis contained in the award seems to me to make only the most conclusory reference to the kinds of standards normally used in this kind of proceeding, and is apparently based upon a very puzzling misunderstanding (notwithstanding continual protest by the City) of a mediation settlement reached, but rejected prior to the arbitration hearing on this matter. The award states, on page 8: "The Panel notes that (1) the City proposed a

5% increase if the Union would agree to a three platoon system and (2) the City negotiator, in a mediated settlement, agreed to a 5% increase."

This statement, which appears to represent a substantial portion of the apparent justification of this award, is so seriously misleading that it raises fundamental questions. It was made unmistakably clear to the arbitration panel that the 5% increase offered by the City during bargaining was in return for, and conditioned upon, the Union's acceptance of a three platoon system, rather than the current four platoon system. The City projected savings from the proposed system which would have completely offset the cost of the raise. When this offer was rejected by the Union, a tentative settlement was subsequently mediated, but it contained no provisions for any type of wage increase. Copies of that tentative agreement were provided to the panel members at the time of the hearing.

In conclusion, I acknowledge some reservation about the legal framework in which decisions relating to employment of fire and police personnel are given to an Arbitrator, rather than left to the parties for resolution. But it is essentially frustrating when the arbitration process does not provide any serious effort in analysis in order to justify its award. I am absolutely certain that no thoughtful legislature would act upon the kind of analysis which has been made in this award.

Ira M. Gates

Ira M. Gates
City Administrator

11/1/77

Date