

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD
INTEREST ARBITRATION PANEL

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In the Matter of Interest Arbitration

between

City of Buffalo

and

Buffalo Professional Firefighters
Association, Local 282

Opinion

and

Award

(PERB case no. IA93-002)

* * * * *

Hearings in this matter were held on July 22 and 23, 1993, at the Holiday Inn in Buffalo, New York. Prof. Howard G. Foster was designated to serve as the public member and chairman of a tripartite arbitration panel through the procedures of the New York State Public Employment Relations Board ("PERB"). The employer member of the panel is Michael P. McKeating, Director of Labor Relations for the City of Buffalo. The union member of the panel is David Donnelly, President of Local 282. Upon submission of post-hearing briefs by both sides on September 10, 1993, the record was closed.

APPEARANCES

For the City:

- Dennis J. Campagna, Attorney
- James N. Bulger, Deputy Fire Commissioner
- Thomas F. Keenan, Budget Director
- Richard Planavsky, Commissioner of Administration and Finance

For the Union:

- Anthony J. Hynes, Consultant, Fire Captain
- W. James Schwan, Attorney
- Jeffrey DeLisle, Staff Representative, IAFF
- Ronald T. Cassel, Vice President
- Edward Fennell, Consultant
- James Hynes, Witness, Fire Lieutenant

BACKGROUND

The most recent collectively bargained agreement between the City of Buffalo and Local 282 ("the parties") expired on June 30, 1986. Since that time, the terms and conditions of employment for Buffalo firefighters have been governed by a series of interest arbitration awards, the most recent of which expired on June 30, 1992. Prior to that expiration the parties entered into negotiations for a successor agreement, but they were unable to reach a settlement, and impasse was ultimately declared in November 1992. After mediation efforts by PERB failed to produce a settlement, the instant arbitration proceeding was invoked.

Negotiations both before and after the invocation of arbitration produced agreement on a number of issues, including the granting of authority to the arbitration panel to render an award covering the period 1992-95. Those agreements shall be incorporated into and attached to this award (see attachment titled "Summary of Agreement Reached," dated July 22, 1993.) In addition, the parties have reached agreement on a formula for calculating hourly pay in determining hourly-based economic benefits, and this agreement is also appended to and made part of this award.

THE ISSUES

By joint agreement of the parties, the following issues have been submitted to the arbitration panel for resolution:

1. "Parity"

(A) As specified in the "Summary of Agreement Reached," the parties have agreed on certain pay increases to take effect for the contract years 1993-94 and 1994-95. At issue remains an additional two percent (2%) increase proposed by the Union to match a two percent increase in base salaries awarded by an arbitration panel to the Police Benevolent Association (PBA) for the 1990-92 period.

(B) The 1992-95 settlement between the City and the PBA provides for a "rolling in" of reporting pay into the police officer's base salary at a rate of 10.5 percent. Firefighters do not receive reporting pay, but they do receive extra pay as meal compensation (commonly referred to by the parties as "lunch money"). The parties are in agreement that the lunch money should be rolled into the firefighter's base, but they do not agree on the proper rate. Because of their schedules, firefighters work on fewer days than do police, and thus receive less in lunch money (7.3 percent of salary) than police receive in reporting pay. The issue is thus whether the lunch money should be rolled in at 10.5 percent or 7.3 percent.

2. Proposal for Extra Duties and Responsibilities

The City proposes three new provisions governing the scope of duties and responsibilities for firefighters, to wit:

(A) Fire Code Enforcement Officers. Consistent with the Buffalo Financial Plan Commission's recommendations regarding the operation of the Buffalo Fire Department, the City will develop a program designed to make line firefighters certified to function as Fire Code Enforcement Officers. Such program shall be designed by the Commissioner or his designee and phased in over the life of the 1992-95 Agreement and considered a part of the established duties and responsibilities of Local 282 members.

(B) Performance as First Responder "D" and/or Emergency Medical Technician (EMT). The City may, at its option, implement a program designed to train unit members as First Responder "D" and/or EMT, and to direct trained unit members to function as such upon successful completion of the program. Such duties and responsibilities shall be considered as part of the established duties and responsibilities of Local 282 members.

(C) Contiguous Areas. Local 282 shall fully cooperate with any future City effort to extend fire protection to contiguous areas.

3. Impact of Closings of Fire Houses or Companies

The City has indicated an interest in closing certain fire houses. The Union has expressed concern about the safety implications of such closings, and has accordingly proposed the following new language:

Due to the increased likelihood of death or injury when apparatus respond with three (3) firefighters, the City, in the interest of improving safety and saving lives, will operate all apparatus with sufficient personnel to minimize the risks encountered by firefighters.

Recommendations and information provided in NFPA 1500 and other sources regarding crew size should be used to guide the City in its efforts to provide a safer environment for its firefighters (i.e., four firefighters per apparatus).

4. Shift Differential

The Union proposes the introduction of a 15-cent pay differential for all hour worked between 5:00 p.m. and 8:00 a.m.

DISCUSSION AND FINDINGS

For convenience of discussion, this report will address each of the above issues in turn. For each issue, the discussion format will be: (1) the arguments of the party advancing the proposal; (2) the arguments of the other party; (3) the panel's analysis; and (4) the panel's award.

PARITY

Although there are two components to this issue, base pay and lunch money roll-in, the panel believes that both pieces of the issue should be resolved by reference to a common standard. Hence we will deal with them together.

Contentions of the Union. The Union contends that as a result of differences between arbitration awards for police and firefighters for 1990-92, as well as differences between the 1992-95 police settlement and the issues settled thus far between the City and Local 282, there remains a significant and substantial disparity in base pay and total compensation between the two groups, a disparity that is not grounded in either the historical efforts of the parties to produce parity or the relevant attributes of the two occupations. In addition, notes the Union, firefighters receive less money than police officers in the form of shift premiums, court time pay, and

holiday pay. Furthermore, the recent settlement between the City and the police will eventually result in a reduction in annual hours worked by police officers, thus further widening the gap between police and firefighters in terms of hourly pay. Some of this disparity will remain even if the panel awards all the changes proposed by the Union.

Parity between police officers and firefighters is a common standard in municipalities, urges the Union. Such parity exists in Albany, Rochester, Yonkers, and Syracuse (although an arbitration award in Syracuse was recently vacated). Furthermore, the record shows that the pay of Buffalo firefighters lags behind their counterparts in comparable cities in upstate New York.

The Union further urges that parity between police and firefighters has been a historical pay standard in Buffalo, virtually since the inception of the Taylor Law in 1967. This standard has been invoked repeatedly by both the actions and words of prior arbitration panels. If parity is to be maintained, argues the Union, then at the least the total compensation paid to firefighters and police officers must be equalized (even though firefighters would still work more hours to earn that compensation). This parity is not remotely possible unless firefighters are made whole for the extra two percent received by the police in the last round of arbitration awards (1990-92) and for the equivalent of the reporting pay rolled into the police officer's base pursuant to the 1993 settlement between the City and the PBA.

Contentions of the City. The City notes that the first statutory criterion guiding an interest arbitration panel is "the interests and welfare of the public and the financial ability of the

public employer to pay," and it contends that Buffalo does not have the financial ability to comply with the Union's demands. Buffalo is a poor city by any standard or measure, and its capacity to close its projected budget deficits is compromised by its declining population, high unemployment, and depressed economic condition. In recent years its chronic deficits have been financed by budget notes, which deficits have been caused largely by arbitration awards coming in at levels well beyond those budgeted. In 1992-93, with over half of the budget State-funded, State aid was cut substantially, producing a budget gap of some \$70 million. As a result, property taxes were raised substantially, jobs were cut, and a wage freeze was instituted. All unions have agreed to forgo raises for 1992-93. These and other steps produced a tenuously balanced budget for 1992-93.

Should the panel impose added costs for 1992-93, urges the City, the resulting deficit would have a disastrous effect in 1993-94. A budget gap of over \$29 million for that year was closed with the help of a \$10.3 million advance payment from the State, a payment explicitly conditioned on a balanced budget for both 1992-93 and 1993-94. Unbudgeted increases could therefore put both budgets out of balance and result in the loss of bridge funding.

The City further argues that granting the Union's parity demands would operate against the interests and welfare of the public. The record establishes that future budget gaps cannot be closed by increasing taxes. The citizens of Buffalo cannot afford to spend additional money in the interest of parity. Parity between the PBA and Local 282 is not a game the citizens are prepared to play, particularly in light of current litigation between the Buffalo Board

of Education and the Buffalo Teachers Federation, in which more than \$100 million is at stake.

As for pay comparisons, the City contends that the relevant exemplars for present purposes are Syracuse, Rochester, and Albany. By these standards, Buffalo firefighters are competitively paid.

The City further argues that with the settlements already reached with Local 282, parity will exist between firefighters and police officers. The arbitration awards issued in 1987 were acknowledged by Local 282 to have preserved parity by virtue of their providing for equivalent increases, and that parity was consciously and specifically continued by the next award involving Local 282 issued in 1989 (covering 1988-90). Subsequently, in 1991, the firefighters received an award for a 6 percent raise followed by a 4 percent raise, plus 48 hours in holiday pay (worth 2.3 percent). This was followed by a police award providing for 4 percent increases three times over the contract period. With compounding, the total increases for the two groups over the contract term were virtually identical. The groups have also had parity with respect to extra pay for lunch money (firefighters) and reporting time (police), both providing one hour's pay per day. While it is true that police receive more money because they work more days, this difference has never before been considered as a parity issue. In sum, Local 282's parity proposals would in fact destroy the very condition of parity it claims it wishes to preserve.

Finally, the City notes that, over the years, pay increases produced by settlements and arbitration awards have far exceeded increases in the cost of living.

Panel's Analysis. While it is often the case in interest arbitrations that such standards as cost of living and pay scales in comparable jurisdictions are prominent in the determination of a just and reasonable outcome, the pay issue in this matter rests heavily on the criterion of parity with another bargaining unit. There can be little doubt that the parties, both historically and currently, have sought to treat police officers and firefighters uniformly, a finding reflected not only in prior negotiations and arbitrations, but also in the issues in the instant negotiations that the parties have already settled, many of which are described in conversation cursorily as "same as police." To look at salaries in comparable cities -- even in those that the parties agree are comparable -- is not a fruitful exercise, since adoption of the position of either side here would place Buffalo firefighters within the range established by those "comparables." This is not a case in which a just and reasonable outcome can be readily determined by standards in other cities.

In the judgment of the panel, moreover, there is another key point in play here. That is the fact that the pay scales that have been established for police officers for 1992-95 resulted from a negotiated settlement. This settlement was reached in April of 1993, after the dimensions of the City's budgetary travails were well known, and after the Report of the Buffalo Financial Plan Commission had been issued. In this context, assuming a persuasive definition of "parity" can be established, it is appropriate for the panel to ask why pay parity between police officers and firefighters should not be expected. Put another way, one might readily ask why firefighters should not receive the same pay for their normal and

regular duties that the City has agreed police officers should receive for their normal and regular duties.

The prominence given to parity in the City's negotiations with its uniformed forces is, as noted, longstanding (though not necessarily unvarying). Four years ago, for example, an arbitration panel chaired by Douglas Bantle had this to say:

Anyone reading this document and/or are familiar with the negotiations and the arbitration hearing will recall that both parties extensively addressed the parity of the police and fire units over the years. . . . In this case both parties made such a persuasive case that equities demand similar treatment between the two (2) units that I have become convinced that is the proper solution

In that arbitration, significantly, the City's representative dissented from the decision, not because it strayed from parity, but because it adopted the parity principle to follow a prior police award that the representative found excessive.

Two years ago, another arbitration panel, chaired by Jeffrey Selchick, revisited the issue of parity (among others), and noted that "the panel also is of the view that it must take into account the traditional parity which has been maintained for many years between the Buffalo firefighters and the Buffalo police." The City dissented from that award as well, but its dissent raised no objection to the principle of parity.

Indeed, even in this proceeding the City has not denied that parity has been a traditional standard in police and firefighter wage-setting. It has suggested, however, that parity has been maintained only in terms of pay changes in a given round of bargaining, not in terms of the pay levels that result. But we find little evidence in the record of this definition of parity as an explicit guiding principle in pay setting, nor do we discern the

logic of such a standard. Indeed, if equivalency of change were a consistent standard in wage setting, then any disparity between the pay of the two groups -- one, say, created by an arbitration award in an earlier bargaining round -- would never be closed, and we would be left with the question of why such a disparity should exist in the first place. That question is in fact found nowhere in the record of this case, for the apparent reason that nobody has offered a substantive argument for why the two groups should be paid differently. Yet adoption of the City's position in this proceeding would put the base pay of firefighters at a level considerably below the base pay of police officers.

The reason that the base pay of the two groups would diverge if the Union's demands were rejected stems from the history of pay increases in recent bargaining rounds. In 1991, the firefighters were granted a total of about ten percent in base pay increases (for 1990-92) plus additional "holiday pay" money (worth about two percent) adopted consciously to match an extra emolument that the police had received in an earlier arbitration. Shortly afterward the police received base pay increases totalling twelve percent, thus restoring the differential that the firefighters award was intended to eliminate. As of June 30, 1992, then, firefighters were earning about two percent less than police in base pay.

In addition, over the years the parties (and the police union) have utilized other devices to provide money to both police officers and firefighters. In the case of police, there was "reporting pay" in the amount (most recently) of one hour's pay per day. For firefighters, there was "lunch money" at one hour's pay per day. But since firefighters work fewer days (although more hours), the actual

money received by them was less than that received by police, a differential amounting to a bit over three percent. Now if there were a substantive basis for these payments, one could argue that the differentials were justified, as would be folding them into the base at different levels, but in fact police officers did not actually have to "report" to collect their reporting pay, and the extra money in both cases became largely indistinguishable from base pay.

Sensibly, the City and both unions have agreed to recognize reality and fold both reporting pay and lunch money into the respective bases of police officers and firefighters. Given that this money does not in any way represent extra pay for extra work for either police or firefighters, the panel sees no justification for rolling these payments into the base at different levels, even though an equal "roll-in" will involve "new money" for firefighters but not police. Folding the money in equally merely corrects a past inequity.

In summary, the dominant facts in this case are that the City has agreed to a certain pay scale for police officers, and it has not offered a compelling reason for setting the pay of firefighters at a lower level. It has not argued that firefighters have less demanding responsibilities, have less hazardous jobs, or need less training. It has not argued that labor market measures -- e.g. relative number of applicants for the two jobs -- dictate different pay scales. The City's prime argument, rather, is that its financial circumstances are straitened. It has not explained, however, why the fiscal constraints that preclude the City from paying its firefighters a given amount did not preclude its paying its police officers the same amount.

The panel is nevertheless sensitive to the fiscal plight of the City, the reality of which is evident in the record. The panel is persuaded by the City's assertions as to the dire consequences of disrupting the 1992-93 or 1993-94 budgets, and it recognizes that the implementation of parity will cost the City money that it can ill-afford in those two budget years. We believe, however, that the answer is not to deny the essential justification for parity, based as it is on both historical practice and the inherent similarities of the two occupations, but rather to delay the achievement of parity for a reasonable time within the constraints of our authority, in order to give the City time to prepare budgetarily for the ultimate phase-in of parity between police officers and firefighters. Thus the award rendered here will have a modest budgetary impact during the 1992-95 term of the contract, but will produce parity at the end of the period.

Award:

Effective July 1, 1993, the lunch money provision of the contract based on annual salary effective 6/30/92 will be rolled into the base at 7.3 percent.

Effective January 1, 1995, 3.2 percent will be added to the base salary of all bargaining unit members.

Effective June 1, 1995, there will be an across the board increase sufficient to bring the base salary of firefighters to a level equal to that of equivalent ranks of police officers, as set forth in the 1992-95 collective bargaining agreement between the City and the PBA:

Division Fire Chief	Police Inspector
Battalion Chief	Police Captain
Chief of Communications	Police Captain
Superintendent of Fire Alarms	Police Captain
Fire Lieutenant	Police Lieutenant
Firefighter Step 1-5	Police Officer Step 1-5

For members of the firefighter unit who have no equivalency in the police unit, the base salary will be increased by 2.0 percent on June 1, 1995.

EXTRA DUTIES AND RESPONSIBILITIES

Contentions of the City. As for its proposal on fire code enforcement, the City notes that its housing stock is aging, and that fires in nonresidential structures are unusually hazardous to firefighters. There is a substantial backlog in fire inspections, especially for multiple dwellings. It is important, therefore, that Local 282 members be trained and certified to perform this task, for reasons of both safety and economics. Certifying firefighters as code enforcement officers will not only accelerate inspections but also produce revenues from inspection fees and fines.

The City notes that, over time, the composition of the firefighter's job has moved away from fighting fires and toward emergency medical calls. These calls now account for more than 60 percent of all requests for assistance received by the Department. Yet at present the Department has few people certified as a First Responder D and only 3 people certified as an EMT. There is thus a public interest and need to expand the training and duties of firefighters in this area. The City urges that its proposal to implement a training program in these functions and assign people to them should be adopted.

The City also urges that its proposal on contiguous areas be granted. Under this proposal, Local 282 would pledge to cooperate with any future effort to extend fire protection to neighboring areas, such as Lackawanna. Doing this would provide additional revenue to the City, generate additional work for Local 282 members, and serve the public by extending the City's firefighting services.

Contentions of the Union. The Union supports the City's proposals with respect to fire code enforcement and medical training,

with the proviso that firefighters be adequately compensated for the additional duties and responsibilities that will result. In Albany, for example, firefighters with EMT certification receive an additional \$800 in base pay and those with First Responder D certification an additional \$2,000. As for the City's proposal on contiguous areas, the Union also would support the effort provided that firefighters are adequately compensated.

Panel's Analysis. There appears to be little controversy over the merits of these proposals. As for the Union's caveat that implementation of these proposals should be conditioned upon "adequate compensation," the panel notes that the record contains very little guidance as to what may constitute adequate compensation. The panel further notes that providing emergency medical services is already part of the normal and everyday duties of firefighters, and the certification proposed by the City will not result in significant differences in kind in what firefighters routinely do. As long as training is conducted on the City's time and at City expense, it is not obvious why the City should be expected to pay more (and indefinitely) in the form of higher salaries. If, in any event, after the code enforcement officer and EMT/first responder D proposals are implemented, the parties determine that there has in fact been a significant broadening of a firefighter's responsibilities as a result, they will be able to revisit the issue in conjunction with negotiations on a successor agreement in 1995. As for the contiguous areas proposal, the panel discerns nothing in it that changes the firefighter's job materially and hence even arguably warrants additional compensation.

For these reasons, the panel concludes that the City's proposal should be adopted with no qualifications as to compensation.

Award. The parties shall add the following provisions to their Agreement:

The City may, at its option, develop a program designed to make line firefighters certified to function as Fire Code Enforcement Officers. Such program may be designed by the Commissioner or his designee and phased in by June 30, 1995. Upon implementation of the program, fire code enforcement shall be considered a part of the established duties and responsibilities of bargaining unit members.

The City may, at its option, implement a program designed to train unit members as First Responder "D" and/or EMT, and to direct trained unit members to function as such upon successful completion of the program. Such functions shall be considered as part of the established duties and responsibilities of bargaining unit members.

Local 282 agrees to cooperate fully with any effort by the City to extend fire protection to contiguous areas.

IMPACT OF CLOSINGS OF FIRE HOUSES AND COMPANIES

Contentions of the Union. The Union makes the obvious point that firefighting is a hazardous occupation. Work-related injuries are common, and the evidence shows that the incidence of injuries is correlated with the level of staffing. (The Union cites several studies in support of this proposition.) Since 1981, there has been a dramatic increase in the workload of individual firefighters in Buffalo, since calls have remained stable while manning has been substantially cut. The record shows that injury rates for Buffalo firefighters is well above the national average for cities in Buffalo's category.

The Union argues that firefighting is a labor intensive job that requires an adequate number of people on the scene to carry out fire suppression and rescue activities while minimizing injuries to both

firefighters and civilians. Professionals in the field have consistently supported minimum staffing levels of four firefighters on an engine and five on a truck. If the community expects continued aggressive attacks on fires, it must provide the department with the resources necessary to meet those expectations. Firefighters should not be expected to accept a level of risk that the community finds unacceptable to itself. Numerous studies have shown that inadequate staffing means that firefighters must adopt defensive rather than offensive tactics against fires, or risk serious injury to themselves. They also show that in fighting fires it is critical to deploy people and equipment to the origin of the fire as quickly as possible, and that this ability is directly dependent on adequate manning. The definition of "adequate manning" as at least four persons per piece of equipment is a well established industry standard, recommended by the National Fire Protection Association (NFPA) since at least 1962. In 1992, the Metropolitan Fire Chiefs' Division of the International Association of Fire Chiefs endorsed a minimum staffing level of five firefighters per company.

The Union further points out that there is a professional consensus on this proposition: if a choice must be made between between reducing fire houses and reducing crew sizes, it is preferable to close fire houses. And if fire houses are to be closed, then the necessarily increased response time (with greater distances on average) makes it even more imperative that the responding companies be adequately staffed. At present, notes the Union, ten of Buffalo's 40 companies are staffed by only three people.

Contentions of the City. The City notes that Buffalo's configuration of fire houses is archaic, and the facilities themselves are old. With modern technology and equipment, not all existing houses and equipment are needed. The Mayor's 1993-94 budget proposed a consolidation within the Fire Department, with three companies closed by January 1, 1994. This proposal was rejected by the Common Council, pending a study of the department, but it is anticipated that some closings will be effected in due course.

The Union's proposal, the City points out, would require the addition of 20 firefighters (ten per shift for two shifts). These additions are not necessary, urges the City. The various reports on which the Union relies carry only recommendations on staffing, not suggested requirements, and the International Association of Fire Fighters has been unable to get anyone to adopt the four-person minimum as a mandate. While there is no doubt that firefighting is a dangerous occupation, there is no definitive correlation between injuries and manning levels. (Indeed, one of the Union's exhibits shows an increase in injury rates when manning is increased from five to six.) The Johns Hopkins study relied on by the Union is flawed because of inadequate controls. Nor is there any evidence in Buffalo that injuries have been caused by inadequate manning.

Similarly, urges the City, there is no support in the record for the Union's suggestion that four-person crews are more efficient.

Panel's Analysis. It is worth noting that the record in this case contains a number of studies, and extensive testimony, supporting the proposition that there is a direct link between staff levels and firefighter safety. The City argues that much of this evidence is flawed, and the panel would also observe that much of it

derives from the firefighters' union, either as producers of the data or sponsors of their collection. At the same time, however, the findings that the Union cites are in no way counter-intuitive. Even more important, it must be observed, is that there is virtually no concrete evidence in the record to support the contrary proposition, namely, that staffing levels bear no systematic relationship to injury rates. That would not be a difficult point to make statistically (assuming it were true), and yet it has not been made.

The record contains voluminous evidence on the nature of a firefighter's job, but we believe it is unnecessary to do more than cite the dry language of the job description (UO-1):

DISTINGUISHING FEATURES AND CHARACTERISTICS

Employees in this class perform manual work of a hazardous nature in fighting fires. Work involves performing tasks under emergency conditions protecting life and property. It also involves physical exertion under handicap of smoke, extreme heat, gasses, and cramped surroundings.

REQUIRED KNOWLEDGES, SKILLS AND ABILITIES

. . . willingness to make personal sacrifices to serve the community; remain aware of other firefighters efforts and be prepared to assist them; ability to get along well with others; working together with others as part of a team

The nexus between staffing and safety is asserted repeatedly in the record of this case. Citing a study of the Dallas Fire Department (UO-22), a report on the situation in Buffalo by the New York State Professional Firefighters Association (UO-11) observed:

Inadequate staffing, according to this report, resulted in delays in the performance of critical tasks and a loss of critical functions including increased risk to victims of fire due to the length of delays. It also had a cumulative effect created by combined delays of individual units resulting in an even greater loss of overall effectiveness. Increased physiological stress was placed on firefighters as they tried to compensate for lower staffing levels with a commensurate increase in risk when aggressive procedures were taken without adequate support. (p. 13)

The record also contains a lengthy report of the International Association of Fire Fighters (IAFF) titled "Safe Fire Fighting Staffing: Critical Considerations." (UO-19A) This report, issued in 1993, cites numerous studies linking staffing and safety, and calls attention to the recommendation of the National Fire Protection Association (NFPA) that initial arriving apparatus should be staffed with at least four firefighters to initiate an interior fire attack. The report notes:

The adherence to a minimum level of safety staffing grew out of intuition and experience and is empirically grounded in results from study after study showing the causal relationship of deficient fireground staffing and increased fire fighter injuries. (pp. 8-9)

The report goes on to discuss several of these studies. A telling example is a 1982 study of the Seattle Fire Department published by the NFPA, which showed that "the rate of fire fighter injuries expressed as total hours of disability per hours of fireground exposure were 54% greater for engine companies staffed with 3 personnel when compares to those staffed with 4 fire fighters, while companies staffed with 5 personnel had an injury rate that was only one-third that associated with 4-person companies." (p. 17) The study also found that the severity of injuries was much higher with 3-person companies.

The aforementioned study in Dallas made a point relevant to the instant issue. As the IAFF reports it:

The study concluded that deficient levels of staffing will result in an inability to cover critical tasks. As the number of fire fighters decreases without eliminating any of the tasks to be accomplished the Department must delay some of the required tasks or attempt to perform all the tasks unsafely with inadequate staff.

Consequently, the Dallas Fire Department concluded that in a residential fire:

The five-person crews demonstrated a more coordinated and effective attack on the fire and search and rescue operation, [while] the four-person crew was capable of performing satisfactorily in controlling the fire and in effecting the rescue operation.

The study's conclusion regarding the three-person crew was that not all the required critical tasks could be accomplished within a given time span. Regarding the three-person crew, the report stated:

At this level there was little margin for error and any appreciable delay in arrival might place the control of the fire beyond their capability. (p. 18)

The IAFF report also cites a study conducted by researchers at Johns Hopkins University. That study found, among other things, that "cities which operated fire suppression companies with less than 4 personnel had an injury rate per 100 workers that was 36.3% greater than those cities which had staffing levels of 4 or more." (p. 23)

Finally, it is worth citing the NFPA standard on staffing adverted to earlier (OU-25B, p. 1500-40):

It is recommended that a minimum acceptable fire company staffing level should be 4 members responding on or arriving with each engine and each ladder company responding to any type of fire. The minimum acceptable staffing level for companies responding in high-risk areas should be 5 members responding or arriving with each engine company and 6 members responding or arriving with each ladder company. These recommendations are based on experience derived from actual fires and in-depth fire simulations and are the result of critical and objective evaluation of fire company effectiveness. These studies indicate significant reductions in performance and safety where crews have fewer members than the above recommendations. Overall, 5 member crews were found to provide a more coordinated approach for search and rescue and fire suppression tasks.

The issue before the panel is not the level of staffing in the Buffalo Fire Department as such, but the impact on safety of the City's proposal (not itself before us) to reduce the number of fire companies and fire houses in Buffalo. Whatever the evidence says about the current practice of running one-fourth of Buffalo's fire companies with three persons, it certainly suggests that safety

margins will be reduced as response time is increased, even if only by seconds. The City observes that adoption of the Union's proposal will require the addition of 20 firefighters, but that would be more than compensated by the closing of only three fire companies. In any event, while the City might legitimately claim that three-person crews have not been shown to be excessively unsafe by the standards of the courtroom, it is not clear to the panel that this is the proper standard. Where the City is proposing to make a change that will inevitably have the effect of increasing response time, the panel cannot ignore the potential interaction of that effect with existing staffing levels that, at least according to some credible evidence, raise serious safety questions. We are persuaded, in short, that the prospective closing of fire units, while legitimately dictated by financial stringencies, must be accompanied by measures to protect the firefighters against increased risk of injury.

Award. The parties shall incorporate the following provision into their Agreement:

If the City elects to close one or more fire companies, the Fire Department shall follow the recommendation of NFPA 1500, *Standard on Fire Department Occupational Safety and Health Program* (1992), Section A-6-4.1, that a minimum acceptable fire company staffing level should be 4 members responding on or arriving with each company responding to any type of fire call.

SHIFT DIFFERENTIAL

Contentions of the Union. As noted, the Union urges that a differential of \$0.15 should be paid for all work performed by firefighters on the night shift. Such a differential is paid to police officers in Buffalo.

Contentions of the City. The City notes that unlike firefighters, police officers are permanently assigned to one of three shifts. Those who work on the night shift must patrol their designated areas. Firefighters, by contrast, rotate their shifts and at night are permitted to sleep in the fire houses; no firefighter is permanently assigned to the night shift. Furthermore, when one looks at the entire benefit picture, it becomes clear that Buffalo firefighters receive non-wage compensation comparable to that of their counterparts in other cities.

Panel's Analysis. While the panel is cognizant of the shift differential benefit enjoyed by police officers in Buffalo, and as discussed above at length is sensitive to the significance of the parity standard in police and fire negotiations, we see a fundamental difference between the shift differential and other forms of compensation. For police officers, working the evening or night shift is an extra burden differentiating those officers from those who work the day shift exclusively. For firefighters, by contrast, the shifts are rotated, so that working the night shift is part of everyone's job. The basic purpose of a shift differential is to compensate people working at undesirable times precisely for working those times, not as part of their regular pay.

It could be argued, of course, that since the job of a firefighter involves regularly working at undesirable times, then the base pay of the firefighter should reflect that inconvenience. But that argument then opens the issue of base pay up to all measures of desirable and undesirable features of different jobs, including the City's not unreasonable point that firefighters are not always expected to be actively working throughout the night shift. In

David Donnelly
DAVID DONNELLY
Employee Organization Panel Member

10/7/93
Date

STATE OF NEW YORK } SS:
COUNTY OF ERIE }

On this 7th day of Oct. , 1993, before me personally came and appeared DAVID DONNELLY, to me known and known to me to be the individual described in the foregoing Instrument, and he acknowledged to me that he executed the same.

Judith A. Reilly
Notary Public

NOTARY PUBLIC STATE OF NEW YORK
JUDITH A. REILLY
10/23, 1995

NOTARY PUBLIC STATE OF NEW YORK
JUDITH A. REILLY
10/23, 1995

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of Interest Arbitration Between

PERB CASE

BUFFALO PROFESSIONAL FIREFIGHTERS
ASSOCIATION, LOCAL 282, AFL-CIO

IA93-002

Petitioner,

and

CITY OF BUFFALO,

Respondent.

Howard G. Foster
Public Panel Member and Chairman

Michael P. McKeating, Esq.
Public Employer Panel Member

David Donnelly
Employee Organization Panel Member

DISSENTING OPINION of
MICHAEL P. MCKEATING

October 12, 1993

I hereby dissent from the opinion and award of the majority in PERB Interest Arbitration Case IA93-002.

I do so specifically because I disagree with the majority's definition and analysis of the term "parity" which is crucial to the majority's resolution of Issue No. 1.

It is true that the record of past arbitrations shows that the City has historically agreed that Firefighters and Police Officers should have parity. But the record also shows that the City has always understood parity to mean that Firefighters and Police Officers would be treated in an equivalent manner in terms of the awarding of compensation increases or new benefits in each round of negotiations. It has never meant that Firefighters and Police Officers would be treated exactly the same, or would be given exactly the same benefits.

For example, for a number of years, Police Officers have received a form of compensation outside of the base salary called "reporting pay." Firefighters have received a form of compensation outside of the base salary called "meal allowance." In both cases, this compensation was in recognition of certain working conditions unique to the job duties of Police Officers and Firefighters. In both cases, the compensation was one hour per day additional pay. However, the reporting pay amounted to more money over the course of the year for Police Officers than the meal allowance did for Firefighters, because Police Officers worked more days per year than Firefighters.

Prior to the commencement of this Arbitration, the City and the Police Union had entered into a negotiated contract for the period July 1, 1992 to June 30, 1995, calling for effective pay increases of 0%, 4% and 5% respectively, and calling for the reporting time to be rolled into the base at the actual cash value of 10.5% of payroll.

Before the hearing in this Arbitration, the City and the Firefighters Union reached agreement on the vast majority of the issues, and that agreement is annexed to this Award and incorporated therein. Among the provisions of that agreement are that the Firefighters shall get the same percentage wage increase that the PBA received, and that the meal allowance shall be rolled into base salary for the Firefighters, just as reporting time was for the PBA.

Two issues remained in dispute. One was the value of the meal allowance roll-in. The City contends that it should be rolled in at its actual cash value of 7.3 percent. The union contends that it should be 10.5 percent, because that is what the PBA received. Also, the union contends that it should receive an extra 2 percent because its salary scale is now 2 percent lower than the Police salary scale. This is because in the previous round of Interest Arbitration, the Firefighters received salary increases of 6% July 1, 1990 and 4% July 1, 1991, while the Police received 4% July 1, 1990, 4% January 1, 1991, and 4% July 1, 1991. The compounding effect of this 4-4-4 raise put the Police about 2% ahead of the Firefighters in base salary at the end of the two year period, on July 1, 1992.

What this reasoning fails to recognize is that the Prosper 1990-92 Police Interest Arbitration Award expressly gave the Police an extra two percent in order to restore their parity with the Firefighters, who had been given holiday pay worth 2.3% of their salary, by the corresponding Selchick 1990-92 Firefighters Interest Arbitration Award.

Therefore, it is the City's contention that the Firefighters have parity with the Police Officers. In fact, the Firefighters representative at the Interest Arbitration Hearing, Capt. Anthony Hynes, admitted that as of 1987, there was parity between the Fire and Police Unions. The Selchick Award broke parity when it gave the Firefighters holiday pay, and the Prosper Award restored parity by giving the Police 2% extra in salary.

The City has always understood parity to mean that the Police and Fire unions should be given equivalent increases, although not necessarily in identical form, during each round of negotiations. It is the City's position that the Police and Fire unions had parity going into the 1992-95 negotiations, and therefore it offered them equivalent pay increases.

The majority of this panel now adopts the standard that parity means that the two salary schedules should be mirror images of each other. This approach may be attractive in its simplicity, and since reporting pay and meal allowance will both now cease to exist, disputes such as this one will, hopefully, be moot in the future.

However, the majority's recasting of the definition of parity does not comport with the historical practice of the parties, and

will result in additional personnel costs not contained in the City's financial plan.

For these reasons, I must dissent from the Award.



MICHAEL P. MCKEATING
Public Employer Panel Member

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**BUFFALO PROFESSIONAL FIREFIGHTERS
ASSOCIATION, INC., LOCAL 282,**

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-and-

CITY OF BUFFALO,

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SUMMARY OF AGREEMENT REACHED

July 22, 1993
Buffalo, New York

By direction of Arbitrator Howard Foster, the following represent those issues agreed upon by and between the parties:

1. **TERM:** The Arbitration Panel shall be authorized to make a three (3) year award with effective dates July 1, 1992, through June 30, 1995, subject to the terms set forth below.

2. **SICK AND INJURY (Article 9)**

(A) Delete the following provisions from the expired 1984-86 contract:

(h)(1), (h)(2), (h)(3), (i) and (j) on pages 22 and 23 of the "red" covered agreement.

(B) Replace the above deleted provisions with the following provisions:

Eligibility

(1) Employees will be eligible for sick leave only when suffering from an illness or off-duty injury that would prevent the performance of their duties. Employees who misuse or abuse sick leave privileges may be subject to disciplinary action.

(2) All absences due to illness or injury are to be reported to the Commissioner or his designee on or before the first day of such absence, and the Commissioner may require reasonable proofs of illness (or injury). In the event of a failure to comply with the notice requirements in this Article, the employee's absence may be considered as unauthorized leave. Abuse of sick leave privileges may be cause for disciplinary action.

(3) Article 9(k) re: light duty work.

(C) Obligation of Employee on Sick or IOD Leave to Remain at Home or in Place of Confinement - Shift Only

(1) Unless authorized by the Commissioner or his designated representative, a member of the Department on sick or IOD leave will not leave his residence or place of confinement except for:

(a) obtaining professional medical treatment;

(b) performing therapy prescribed in writing by his physician which is part of his recovery treatment, a copy of which must be submitted

to the Commissioner or his designee, prior to commencing such exercise.

(2) Permission to leave the residence for reasons other than cited above must be documented by the Commissioner or his designee.

(3) For employees on an unchallenged IOD leave, the Commissioner may grant a waiver of confinement for all or part of such leave. The Commissioner's determination shall be made on a case-by-case basis.

(D) Notice

Employees who anticipate being absent due to injury or illness must make every reasonable effort to give notice to their commanding officer as far in advance as possible, prior to the start of their shift time.

(E) Perfect Attendance Incentive (Beginning 7/1/93)

Unit members who have had perfect attendance for each two (2) month period (beginning with July 1 of each contract year) (i.e., have not taken any sick or IOD time) shall receive, on or before June 30 of each fiscal year, eight (8) hours credit for each such two (2) month period. The unit member may either take the credits in cash, or, at his/her option, may bank the entire credit amount. Unit members who elect cash shall be paid at the then contractual straight-time rate. Unit members who elect to have such credits banked may cash them in at the time of retirement, resignation or death at the then straight-time rate.

(F) Effect of Sick and/or IOD Use on Overtime Opportunities

Unit members who utilize sick and/or IOD time shall not be eligible to work overtime (except when all other overtime procedures have been exhausted) for a fourteen (14) day period from their return from such leave. The 14 day period noted above is a "rolling period" which is calculated upon return following use of sick and/or IOD time.

3. MODIFY ARTICLE 3.2 (HOURS OF WORK) AT SECTION (H)(3) to read as follows:

(H)(3) A Battalion call-in roster shall be kept on a rotational basis. In normal circumstances a member shall not be charged with a refusal if called after

1200 hours (for the day shift) or after 2100 hours
(for the night shift).

4. REVISE ARTICLE 11 (BEREAVEMENT LEAVE) as follows:

Contractualize agreement reached last round of negotiations.

5. VACATION CARRYOVER

(A) Except as provided pursuant to Section B below, vacations are non-cumulative and must be taken during the calendar year in which the employee became eligible for such vacation period.

(B) Vacation carryover means carrying unused vacation entitlement from one year to the next consecutive year. Vacation carryover shall be limited to a maximum of two (2) weeks.

(1) The Commissioner may allow vacation carryover where an employee entitled to vacation benefits who becomes ill or incapacitated prior to the taking of such vacation requests carryover privileges; provided that such illness or accident is medically verified by the attending physician specifying the nature and date of the disability.

(2) The Commissioner shall allow vacation carryover in the specific instances which follow:

(a) The Commissioner requesting or requiring an employee to forego scheduled vacation in order that said Department may provide and maintain adequate service to the public.

(b) An employee being injured in the discharge of his duties.

6. PROCEDURE FOR IOD CASES

Parties agreed upon procedure incorporated into new contract.

7. DEFERRED COMPENSATION (PROPOSAL 21)

Already granted - incorporate into the Agreement.

8. ARTICLE 6 (INSURANCE BENEFITS)

6.1 Health Insurance

- (A) The City shall provide, at its expense, health and medical coverage for all employees under the Blue Cross Hospital, Medical/Surgical Traditional 90-91 Plan with the following riders:
- (1) Unlimited Major Medical Expense Rider (BCMM-7), without prescription drug benefit, with a \$100/\$200 deductible. The City may self-fund above the \$100/\$200 to a \$500/\$1,000 deductible using a third party administrator.
 - (2) Rider 8 (Dependents to Age 23)
 - (3) Rider 4 (Emergency Outpatient EKG)
 - (4) Rider 14 (Psychiatric Rider)
 - (5) Increase the current prescription drug rider to a \$5.00 (generic)/\$10.00 (brand name) co-pay.
- (B) Whenever a \$5.00/\$10.00 co-pay is listed in this Article, the City may, at its option, substitute a \$9.00 drug co-pay pending approval of Blue Cross's application for a \$5.00/\$10.00 co-pay provision said \$9.00 co-pay shall include contraceptives.
- (C) In the event the City elects to self-fund as described above, it shall provide reasonable advance notice to the Union President in advance of such change. The Union shall not unreasonably withhold consent to such proposed change. In the event any dispute arises between the parties concerning such self-funding, either party may submit the dispute to expedited arbitration.

In the event the City self-funds above the \$100/\$200 level then no participant's expenses shall exceed the \$100/\$200 level.

6.2 Medical Insurance Upon Retirement

Employees who retire during the life of this Agreement or until a successor Agreement is executed by the Mayor or imposed by interest arbitration with 20 or more years of service with the Buffalo Fire Department, or who take a disability retirement resulting from an injury sustained

in the line of duty shall be entitled to receive paid health/hospitalization (less major medical coverage) with a \$5.00 (generic)/\$10.00 (brand name) drug rider. This shall be a lifetime benefit for those retirees who retire during the term of this Agreement.

6.3 Dental Insurance

The City shall provide the GHI Spectrum Plus Dental Program to unit members. The City reserves the right to change carriers or to self-insure at anytime, with the Union's consent, so long as the benefits by the new carrier or by self-insurance are overall, equal to or better than those provided by the existing carrier. Reasonable advance notice shall be provided to the Union President in advance of any such change. The Union shall nor unreasonably withhold its consent to such proposed change.

In the event any dispute arises between the parties concerning the above, either party may submit the dispute to expedited arbitration.

6.4 Group Life Insurance

The City will continue to provide a group life insurance plan for all members covered by this Agreement which contains the following provisions;

- (A) A five thousand dollar (\$5,000) payment upon the death of the insured;
- (B) An additional five thousand dollar (\$5,000) payment if the cause of death is accidental;
- (C) A maximum payment of five thousand dollars (\$5,000) for limb dismemberment according to a schedule of payments in the current policy providing this coverage;
- (D) A two thousand dollar (\$2,000) payment upon the death of the current spouse;
- (E) A one thousand dollar (\$1,000) payment upon the death of each dependent child from age seven (7) days to nineteen (19) years;
- (F) A waiver of premium and conversion privilege.

9. REVISE ARTICLE 16 (SENIORITY) as follows:

16.4 Vacancies

Firefighters are not eligible to bid on any vacancy until successful completion of their probationary period. (Replaces Section (I))

10. SENIORITY

Settlement of PERB Case #C-3626 by exempting certain titles from the operation of the seniority clause shall be done by a side letter, signed by the parties, and considered part of this 1992-95 Agreement.

11. EVALUATION OF UNIT MEMBERS

The parties shall negotiate terms and conditions associated with the evaluation of Local 282 unit members. Either party may submit unresolved issues to interest arbitration not earlier than 3 months following ratification of the 1992-95 Agreement.

12. DRUG AND ALCOHOL TESTING

The parties agree to enter into negotiations for a drug and alcohol testing program as soon as possible after the signing of this Agreement. This clause shall not be interpreted as a waiver of whatever legal rights the parties may possess in this area.

13. EDUCATIONAL STIPEND (Begins 7/1/93) [Same as PBA]

Add as follows:

(A) Eligible employees shall receive the following stipend:

- (1) Employees possessing an associate's degree or 60 college credits shall receive \$350.00 in addition to regular salary and longevity amounts.
- (2) Employees possessing a bachelor of arts or a bachelor of science degree or 120 college credits shall receive a \$700.00 stipend in addition to regular salary and longevity amounts.
- (3) Employees possessing a master of arts or a master of science degree or a higher degree shall receive

a \$900.00 stipend in addition to regular salary and longevity amounts.

- (B) General rules pertaining to degree or stipend payment:
- (1) All credits and degrees must have been obtained and earned at a college accredited by the New York State Department of Education.
 - (2) For employees seeking the foregoing stipend as a result of credits earned, courses must have been passed with a grade of "C" or better, or, for pass/fail courses, a passing grade.
 - (3) Employees requesting the foregoing stipend must present the Commissioner or his designee with an official transcript and/or proof of current certification, together with a completed form as agreed upon by the City and Local 282.
 - (4) Employees shall only be eligible for one payment in any category described above. Furthermore, payments pursuant to these categories shall not be cumulative. Thus, an employee having two bachelor's degrees and an associate's degree shall be eligible for only one stipend of \$700.00.
- (C) Payment - Eligible employees shall receive a lump sum payment on or about July 1st of each contract year, provided they are on the active payroll at that time.
- (D) In the event an associate degree is required for entry level employment (for future recruits), said recruits shall not be eligible for associate degree stipend.

14. BASE SALARY INCREASES

July 1, 1992 - June 30, 1993: 0%

July 1, 1993 - June 30, 1994:

- (A) Effective 7/1/93: Lunch money rolled into the base based on annual salaries effective 6/30/92 at X%.
- (B) 2% across-the-board increase rolled into the base.
- (C) 2% one time productivity stipend paid on base pay of July 1, 1993.

NOTE: The value of X% to be determined by the Arbitration Panel.

(D) Effective 6/30/94, 2% paid for (B) above rolled into the base.

July 1, 1994 - June 30, 1995:

5% across-the-board increase rolled into the base effective 7/1/94.

Award The parties shall incorporate the following provision into their Agreement:

The hourly rate for all hourly based economic benefits shall be determined by dividing 2080 hours into the annual salary plus longevity. The hourly rate formula shall be as follows:

$$\frac{\text{Annual Salary} + \text{Longevity}}{2080} = \text{hourly rate}$$

Michael P. McKeating
Paul Donnell