

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD
INTEREST ARBITRATION PANEL

NOV - 6 2000

In the Matter of the Compulsory Interest Arbitration

between

PLATTSBURGH PERMANENT FIREMEN'S
ASSOCIATION, LOCAL 2421,

Employee Organization,

-and-

CITY OF PLATTSBURGH,

Public Employer.

PERB Case No. IA97-037; M97-153

OPINION

AND

AWARD

BEFORE: Jeffrey M. Selchick, Esq.
Public Panel Member and Chairman

Jonathan Ruff
Public Employer Panel Member

Donald Killian
Employee Organization Panel Member

NY'S PUBLIC EMPLOYMENT RELATIONS BOARD
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CONCILIATION

APPEARANCES:

For Plattsburgh Permanent Firemen's Association
Stafford, Trombley, Owens & Curtain, P. C.
Amy L. Pombrio, Esq., of Counsel

For City of Plattsburgh
Stuart H. Brody, Esq.
Labor Counsel

Following receipt of the post-hearing briefs, the undersigned Panel met in Executive Session and engaged in discussions during which all issues, evidence and arguments were reviewed and considered. After significant discussion and deliberation in Executive Session, the a majority of the Panel, composed of the Chairman and the Employee Organization Panel Member, reached agreement on this Interest Arbitration Opinion and Award as set forth below.

ISSUES

As set forth in the original declaration of impasse in this matter (Joint Exhibit 6), the Issues before the Panel for determination are as follows:

1. Have the terms and conditions of employment of employees represented by the Union been impacted by the agreements between the City and PARC relating to provision by the City of fire protection and suppression services and ambulance rescue services to the former PAFB?
2. If so, how shall such impact be addressed?

RELEVANT STATUTORY PROVISIONS

Section 209(4)(c) of the New York Civil Service Law provides, in relevant part, that:

(v) the public arbitration panel shall make a just and reasonable determination of the matters in dispute. In arriving at such determination, the panel shall specify the basis for its findings, taking into consideration, in addition to any other relevant factors, the following:

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

b. the 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.

BACKGROUND

In June 1993 the U. S. Department of Defense announced the closure of the Plattsburgh Air Force Base which was scheduled to occur approximately in September 1995. (See Union Exhibit 2). Upon such closure, federal firefighters who had provided primary fire protection and suppression services on the PAFB were displaced. (Tr. 159,174. See Union Exhibit 2).

In order to provide continued fire protection and suppression services at the former PAFB, PARC solicited proposals from interested entities for provision of such services. (Union Exhibit 2). The City submitted a proposal on September 18, 1995. (Union Exhibit 3, Attachment 1). Although the City's proposal was not accepted by PARC (Union Exhibit 3, Attachment 3), the City and PARC entered into a 90-day agreement, effective October 1, 1995, pursuant to which the City became responsible for providing fire protection services to the "old base" portion of the former PAFB which is located to the east of Route 9 in Plattsburgh, New York. (Id.). The agreement was valued at \$18,005.

During the same 90-day period, the South Plattsburgh Fire District assumed responsibility for providing fire protection services to the so-called "new base" portion of the former PAFB situated to the west of Route 9. (Id.). Under this arrangement, however, the City also had fire protection responsibilities for the "new base" area because, under the terms of an automatic mutual aid agreement between the City and the South Plattsburgh Fire District, the City was obligated to respond automatically to reported structural fires in the "new base" area. (Union Exhibit 3, Attachment 5). Because the City's response to fire calls

relating to the “new base” area generally was faster than that of the South Plattsburgh Fire District, the City effectively began to provide fire protection services to both the “old” and “new base” areas which, together, constituted the total area of the former PAFB. (Tr. 31-32, 59-62).

The initial 90-day fire protection and suppression services agreement between the City and PARC was extended through March 31, 1996, and then was extended further through May 31, 1996 with PARC’s payments to the City for the months of April and May 1996 established at \$6,000 per month. (Tr. 36-37; Joint Exhibit 14).

Effective June 1, 1996, the City and PARC entered into an additional agreement pursuant to which the City was to provide fire protection and suppression services and ambulance rescue services for the “old base” area of the former PAFB through September 30, 1998. (Joint Exhibit 15). The terms of the agreement also required the City to continue its participation in the automatic mutual aid program pursuant to which it was required to respond to reports of structural fires on the “new base” portion of the former PAFB serviced by the South Plattsburgh Fire District. (Id. at 2). As compensation for the services to be provided by the City, the agreement required PARC to pay the City \$11,000 per month. (Id. at 3).

The City and PARC entered into a further services agreement for the period October 1, 1998 through September 30, 1999 which provided compensation to the City of \$8,800 per month. (Joint Exhibit 16). That agreement allowed for an extension of one additional year through September 30, 2000. (Id.).

Upon learning of the fire protection services agreement that took effect on June 1, 1996 (Joint Exhibit 15), the Union requested negotiations with the City concerning the impact of the City's obligations under such agreement on terms and conditions of employment of City firefighters who were to provide the services. (Joint Exhibit 8, letter dated July 15, 1996). After the Union made two additional requests to the City for impact negotiations (Id., letters dated September 11, 1996 and October 8, 1996), the City, through its Labor Counsel, responded stating, in relevant part, that:

With regard to the complaint you have regarding "manning", I am unable to understand why this issues [sic] of 7 as opposed to 8 person "manning" suddenly became an issue with the acquisition of the Base as a property under the City's fire protection. Manning seems to be firmly within the jurisdiction of the City's management rights and we do not believe it is either required or fruitful to meet with respect to this issue.

(Id., letter dated October 18, 1996). The Union replied that it was not seeking to negotiate "manning," and reiterated its position that it wished to negotiate with the City over the impact of the City's fire services contract with PARC on terms and conditions of employment of City firefighters. (Id., letter dated October 22, 1996). When no further response to the demand to negotiate impact was made by the City, the Union filed an improper practice charge with PERB. (Joint Exhibit 8).

Following initial proceedings at PERB concerning the improper practice charge, the City and Union met in June 1997 to negotiate the impact of the City's fire services agreement with PARC. (Tr. 77; Joint Exhibit 6). In such negotiations, the Union made a proposal to increase the compensation of City firefighters by \$1.00 per hour to address the

impact issue, but the City claimed that there was no impact on firefighters' terms and conditions of employment as a result of its agreement with PARC. (Tr. 77-81; Joint Exhibit 6). Consequently, resolution of the impact issue was not achieved (Joint Exhibit 6) and the matter progressed to mediation (Tr. 81-82; Joint Exhibits 1, 2). When mediation also was unsuccessful in producing a negotiated agreement concerning the impact issue (Id.), the Union filed a petition for interest arbitration with PERB to have such issue addressed. (Tr. 83; Joint Exhibit 1). The original interest arbitration petition was replaced with an amended petition in which the Union identified its impact negotiating proposal as "a \$1.00 per hour increase to base salary as long as the [City] Services Agreement remains in effect." (Joint Exhibit 2).

The City opposed the Union's interest arbitration petition with a petition for a declaratory ruling, claiming that the negotiating position expressed by the Union in its interest arbitration petition was not a mandatory subject of negotiation. (Joint Exhibit 9). PERB's Director of Public Employment Practices and Representation found that the Union's negotiating proposal seeking a \$1.00 per hour addition to base salary for all members of the negotiating unit related to wages and was a mandatory subject of negotiation. (Joint Exhibit 11). On appeal, PERB affirmed (Joint Exhibit 13), and the instant proceeding followed in due course.

POSITION OF THE UNION

The Union contends that when the events giving rise to the impact matter in issue which is the focus of this proceeding first occurred in or about October 1995, the Union and City were parties to a collective bargaining agreement covering the period from July 1, 1994 through December 31, 1996. That agreement, asserts the Union, did not contain any provision pertaining to the City's right to commit the services of City firefighters to a third party and it did not provide a means to address the impact of such decision. Thus, the Union maintains, when, in July 1996, it sought to address the issue of the impact of the City's decision to have City firefighters provide fire protection and suppression services and ambulance rescue services to the "old base" portion of the former PAFB, the absence of a contractual provision relating to the issue rendered the contractual grievance and arbitration procedures ineffective and impact negotiations existed as the sole means to seek resolution of its concerns.

According to the Union, the current collective bargaining agreement between the Union and the City, which extends from January 1, 1997 through December 31, 2001, also is silent about both the City's right to commit the services of City firefighters to a third party and the means to address the impact of such action. The reason for such silence, claims the Union, is that the parties agreed to separate the impact issue from the negotiations leading to the 1997-2001 Agreement. Consequently, insists the Union, the grievance and arbitration provisions of the 1997-2001 Agreement do not apply to the impact issue and impact negotiations and related dispute resolution through compulsory interest arbitration continue

to be the only means by which the Union may seek to resolve its concerns about the effect of the City's decision to provide fire protection and suppression services and ambulance rescue services to the former PAFB. Citing case law, the Union contends that the parties' obligation to negotiate during the term of an existing collective bargaining agreement does not cease with respect to matters that are not addressed in such agreement.

Moreover, claims the Union, citing additional case law, to establish that a union has waived its right both to engage in impact negotiations and to have access to compulsory interest arbitration, it must be shown, at a minimum, that the issue of impact is addressed specifically in a contractual management rights clause or in negotiated general salary provisions. In this case, the Union asserts that the record is devoid of any such showing by the City; therefore, the Union's right to pursue its impact claims is unfettered.

The Union insists that the City may not avoid impact negotiations simply by denying the existence of impact. Citing case law, the Union argues that the City has an obligation to negotiate the impact of its unilateral action on affected employees as a mandatory subject of bargaining, and that failure by the parties to negotiate a resolution of such issue is a matter for compulsory interest arbitration. Consequently, the Union maintains that the Panel has authority to address the impact issue.

The Union next argues that the "zipper clause" contained in the 1994-96 and 1997-2001 collective agreements does not specifically address impact; therefore, it is well-settled that the zipper clause does not negate the City's obligation to negotiate about the impact of a matter concerning which the collective agreements are silent. Additionally, the Union

claims that the language of the zipper clause is too broad to result in a waiver of the Union's right to negotiate about the impact of the City's unilateral action. Further, the Union submits that the City waived any argument it may have had concerning the preclusive effect of the zipper clause on impact negotiations when it engaged in impact negotiations with the Union on June 4, 1997.

With respect to the substance of its impact claim, the Union maintains that the loss of federal firefighters and equipment due to the closure of the PAFB created a significant change in working conditions for City firefighters. First, the Union contends that after the PAFB closed, federal firefighters and equipment no longer were available to assist City firefighters within the City limits off the base. This loss of significant assistance was compounded, asserts the Union, because, at the same, the City reduced the minimum daily staffing level of firefighters and also removed the aerial ladder from service. Thus, argues the Union, City firefighters are placed in the position of having to perform their regular duties with fewer staff and less equipment, and also without the substantial manpower and equipment support provided previously by federal firefighters.

As a result, the Union contends that City firefighters had to become reliant on area volunteer firemen for assistance. Because such volunteers do not have the same level of training, skills and competence as that possessed by the former federal firefighters and do not always respond to calls with the same number of personnel, the Union contends that City firefighters who are off duty now carry pagers by means of which they are called to return to duty in emergencies to assure the safety of their co-workers. Due to the loss of back up

by the former federal firefighters, the Union claims that City firefighters now face additional stress and reduced safety as they perform their firefighting duties.

Secondly, the Union maintains that the loss of federal firefighters has resulted in an increase in the workload of City firefighters because the City has entered into agreements with PARC by means of which City firefighters now are responsible for the initial response to all fires on the huge area of the former PAFB without any additional personnel or equipment. Formerly, City firefighters responded to fires on the PAFB, but only as back up to the professional federal firefighters who were well-staffed and equipped.

The significance of the services provided to the former PAFB by City firefighters, is reflected by the substantial monthly payments made by PARC to the City for such services. The level of payments recognizes the additional, substantial geographic area for which City firefighters now provide fire protection and suppression services and ambulance rescue services; the difficulty of providing such services to an area with diverse structures such as multi-level historic buildings with slate roofs, commercial buildings, hangars, flight towers and a heating plant; and risks associated with providing fire coverage and rescue services for a large number of unoccupied buildings and to commercial tenants with manufacturing and other operations about which there is little or no information.

Notably, contends the Union, PARC's level of monthly payments is fixed and does not vary based on the number of incidents that may require response by City firefighters. Thus, claims the Union, the payments are for the City's obligation, through its firefighters, to deliver fire protection and suppression services and ambulance rescue services to the

former PAFB irrespective of the frequency with which such services may be needed.

Similarly, argues the Union, the impact on City firefighters derives from their obligation to provide to provide fire protection and rescue services and to respond with necessary services whenever the need arises regardless of frequency. Thus, City firefighters have a higher level of responsibility than that which existed prior to the City's commitment of their services to PARC and the impact of that increased responsibility; namely, the obligation to respond when needed, must be recognized in the form of increased compensation at the level of \$1.00 per hour added to the base salary each member of the negotiating unit for the duration of the period during which they are required to provide services to the former PAFB.

The Union estimates the cost of its impact compensation proposal to be approximately \$100,000 per year, which it claims is appropriate in relation both to the payments for services made by PARC and the level of the City's funding of the Fire Department in comparison to that of other City departments. Moreover, asserts the Union, with a \$3.5 million fund balance, there is absolutely no issue concerning the City's ability to pay increased compensation to its firefighters to recognize their increased responsibilities.

In summary, the Union urges the Panel to find that City firefighters have been impacted by the City's actions, to adopt the Union's compensation proposal and to craft an award which, in the context of the maximum two-year period for which an award may be applicable, will appropriately address the additional work for which City firefighters have been made responsible.

POSITION OF THE CITY

As a preliminary matter, the City argues that there is no link between the funding received by the City from PARC for provision of fire protection and suppression services and emergency ambulance services and the City's decision in 1995 to reduce firefighter minimum daily staffing from 8 to 7. Although initial negotiations between the City and PARC relating to fire and ambulance services generated some optimism about the possibility of returning firefighter minimum daily staffing to 8, the City maintains that no formal commitment was made by the City to the Union to bring about that result.

Next, the City characterizes the cornerstone of the Union's impact case as its "sense of deep loss at the departure of the Air Force Base . . ." and its "sense that life is harder now without the luxury of the Plattsburgh Air Force Base Fire Department." According to the City, the hardship to which the Union refers includes the loss of the rapid response of federal firefighters from PAFB to structure fires in the City; the loss of federal firefighters' capabilities to deal with spills of hazardous substances such as gas; and the loss of use of emergency extraction equipment that federal firefighters had possessed.

The City's response is that alternatives have been implemented to address the loss of support to City firefighters that had been provided by federal firemen from PAFB. For example, the City notes that it adheres to the "two men in, two men out" rule which prohibits a firefighter from entering a building without appropriate back up. That back up, observes the City, now is provided by off duty City firefighters who are called back to work when assistance is needed, and by volunteer firemen who respond to fire and emergency calls

pursuant to mutual aid arrangements.

With respect to spills of hazardous substances, the City maintains that it has implemented “contain and evacuation” procedures that limit the risk of spills to firefighters and citizens and provide for the establishment of a holding action until properly equipped hazardous materials professionals arrive at the scene.

Finally, regarding emergency extraction equipment, the City asserts that it possesses manual extraction equipment for use in emergencies and also can obtain access to the “jaws of life” from a nearby fire district when such advanced equipment is needed. Thus, the City expresses understanding about the Union’s sense of loss resulting from the absence of the manpower and equipment of federal firefighters due to closure of the PAFB, but the City also insists that its firefighters have not been exposed to increased hazards or risks because the City has addressed the loss of federal firefighters’ support by implementing alternative procedures for handling various emergency situations with existing manpower and technology.

Concerning alleged hazardous conditions confronting City firefighters at the former PAFB due to the type and age of structures located there, the City asserts that similar structures exist within the City and that its firefighters are trained to deal with the conditions that such structures present. Although many of the PAFB structures are vacant, the City contends that the Association’s concern about the increased risk of fires in empty buildings is mitigated by PARC-provided security patrols that regularly check buildings and enter them if necessary.

According to the City, the risks to which City firefighters are exposed at the former PAFB actually have diminished since base closure because munitions have been removed, and fire and other emergencies due to flight operations have ceased because the flight line and flight towers no longer are active. Regarding risks associated with hazardous materials stored on the former PAFB, the City characterizes such risks as minimal because the evidence reflects that the type and amount of hazardous material is trivial compared to that which was present when the PAFB was operational.

As evidence that provision of fire and ambulance services to the former PAFB involves minimal risk to or effort by City firefighters, the City argues that there have been only six fire calls to the former base in the last five years, none of which concerned serious conditions. In contrast, over the same period fire calls in the City proper averaged about 700 per year. Additionally, the City notes that from 1995 through 1999, City personnel responded to a total of 7,437 EMS calls, only 10 of which pertained to the former PAFB. Thus, contends the City, the impact on City firefighters of responsibility for providing services to the former PAFB has been very minimal.

According to the City, the Union has not demonstrated any factual basis warranting an increase in compensation in the middle of the term of the current collective bargaining agreement. In fact, argues the City, the Union has no basis upon which to urge such mid-contract alteration because it had the opportunity to address the compensation issue in negotiations leading to the 1997-2001 Agreement. The City insists that it did not agree to sever the issue of compensation for services provided to the former PAFB from the

negotiations culminating in the 1997-2001 Agreement, and it also insists that the zipper clause of such Agreement, which, during the term of the Agreement, empowers either party to refuse to negotiate as to any matter covered or not covered by the Agreement, must be given effect. It is unconscionable, argues the City, to give the Union a mid-contract opportunity to expand the compensation provisions of the current Agreement. In any event, asserts the City, no additional compensation is warranted for City firefighters because their workload and exposure to risk have been reduced both at the former PAFB and within the City proper.

The Union's real objective in this proceeding, the City claims, is to require the City to pay additional compensation to firefighters as redress for the City's 1995 decision to reduce firefighter minimum daily staffing levels from 8 to 7. The City maintains, however, that the issue of the alleged impact of that decision is not properly before the Panel because the Union did not make a timely impact claim relating to it.

In summary, the City contends that the Union has not met its burden of demonstrating that City firefighters have experienced a substantial increase in workload attributable to provision of fire protection and suppression services and ambulance rescue services to the former PAFB. Consequently, the City urges the Panel to deny the Union's claim for additional compensation for such services.

OPINION

As presented in the original declaration of impasse in this matter (Joint Exhibit 6), the Issues before the Panel for review and determination are:

1. Have the terms and conditions of employment of employees represented by the Union been impacted by the agreements between the City and PARC relating to provision by the City of fire protection and suppression services and ambulance rescue services to the former PAFB?
2. If so, how shall such impact be addressed?

In reaching its determination with respect to the Issues presented, the Panel has carefully considered the evidence and arguments of the parties and the statutory criteria contained in New York Civil Service Law § 209(4)(c)(v). The findings of the Panel with respect to both procedural and substantive matters are set forth below.

A. The impact issues presented herein are properly before the Panel for consideration

The 1994-96 and 1997-2001 collective agreements between the City and the Union are silent with respect to the issue of the impact on firefighters' terms and conditions of employment of the City's unilateral decision to provide fire protection and suppression services and ambulance rescue services to the former PAFB. (Joint Exhibits 4, 5). Moreover, neither the management rights nor zipper clauses of such agreements contains language suggesting that the clauses either were intended to extend to the subject of such impact or to preclude impact negotiations. (*Id.*). Additionally, the record reflects that the impact issues herein were not part of the parties' negotiations leading to the 1997-2001

Agreement, but deliberately were kept separate from such negotiations. (Tr. 85, 400; Joint Exhibit 8, letter dated October 8, 1996).

Under these circumstances, it is well-settled that the City has a duty to negotiate on demand concerning the impact of its unilateral action to commit the services of City firefighters to provision of fire protection and suppression services and ambulance rescue services at the former PAFB, and that the statutory impasse procedures, including compulsory interest arbitration, are applicable to such impact negotiations. Public Sector Labor and Employment Law 514-18 (2d ed. J. Lefkowitz, M. Osterman & R. Townley 1998). Consequently, when the City and the Union were unable to resolve the impact issues herein by negotiations, which ultimately involved the assistance of a mediator, the compulsory interest arbitration provisions of New York Civil Service Law § 209(4) became applicable.

The Panel finds, therefore, that pursuant to New York Civil Service Law § 209(4) it has authority to consider the issues in dispute herein and to make a binding determination with respect to such issues.

- B. The impact issues presented for determination herein do not concern the effect of the loss of federal firefighters' manpower and equipment on terms and conditions of employment of City firefighters with respect to their performance of duties in areas of the City other than the former PAFB

A good deal of evidence and argument was presented in this matter concerning the impact of the loss of federal firefighters' manpower and equipment and the resultant effect

on the terms and conditions of employment of City firefighters in relation to their performance of their duties in areas of the City other than the former PAFB. (Tr. 58, 65-66, 121-22, 129, 137, 172-73). This alleged impact, if any, however, is attributable to the federal government's closure of the PAFB and not to any unilateral action by the City. Consequently, the Panel finds that in relation to performance of duties by City firefighters in areas of the City other than the former PAFB, any impact that may have resulted from the loss of federal firefighters' manpower and equipment to support City firefighters is not properly within the scope of the issues presented to the Panel for review and determination. As such impact, if any, cannot be attributed to the action of the City, it is not a matter for which the City can be held responsible.

Accordingly, the Panel finds that the City does not have to negotiate the impact of action taken by the federal government.

C. The impact of the City's reduction, in 1995, of firefighter minimum daily staffing from 8 to 7 is not an issue before the Panel for independent determination

The record reflects that in 1995 the City reduced firefighter minimum daily staffing from 8 to 7. (Tr. 20. See Tr. 344; Union Exhibits 1, 5). The Union filed grievances with respect to such action (see Union Exhibits 1, 5) but did not pursue them (Tr. 28, 57). The record does not reflect, however, that the Union ever made a specific demand to negotiate with the City over the impact of the reduction in firefighter minimum daily staffing and the impact of such decision has not been presented to the Panel for review and determination

independent of the alleged impact of the City's agreements with PARC for provision of fire protection and suppression services and ambulance rescue services to the former PAFB. (See Joint Exhibit 8, letter dated October 22, 1996). The Panel notes, however, that the level of City firefighter staffing is a factor relating to various aspects of the response of City firefighters to fire and other emergencies at the former PAFB and it has given consideration to such factor in making its determination herein.

- D. The Union has established that the terms and conditions of employment of City firefighters have been impacted by the City's agreements with PARC to provide fire protection and suppression services and ambulance rescue services to the former PAFB

It is undisputed that the City unilaterally arranged for City firefighters to provide fire protection and suppression services and ambulance rescue services to the former PAFB. (Joint Exhibits 14-16; Union Exhibit 3, Attachment 3). As a result of the City's action, which was a response to the loss of federal firefighters and equipment due to the federal government's closure of the base (Union Exhibit 2), City firefighters became responsible for the primary response to fire and emergency calls relating to the "old base" area of the former PAFB (Tr. 52, 64, 268). Previously, City firefighters had served only as backup to federal firefighters who had more manpower and equipment. (Tr. 59, 62, 65-66, 75, 160, 163-64, 171, 271).

Additionally, because of mutual aid arrangements with the South Plattsburgh Fire District which has fire protection and suppression responsibility for the "new base" area of

the former PAFB (Tr. 29-30, 51, 64; Union Exhibit 3, Attachment 3), City firefighters also have responsibility to respond to reports of structural fires in the “new base” area to provide support to volunteer firemen of the South Plattsburgh Fire District. (Tr. 31-32, 41, 59-61, 269, 300-01; Union Exhibit 3, Attachment 5). Because City firefighters have faster response times than the volunteer firemen, however, the supporting role of the City firefighters has been transformed into a primary response role in which City firefighters provide the initial response to fires and emergencies until the volunteer firemen of the South Plattsburgh Fire District arrive. (Tr. 59-62, 300-02).

Because of City firefighters’ primary response obligations for the “old” and “new” base areas which, together, constitute the entirety of the former PAFB, the Union contends that City firefighters have been required to assume greater responsibilities than those existing prior to base closure when they served only in a backup capacity to federal firefighters. Additionally, the Union maintains that the risks associated with the new, higher level of responsibility of City firefighters are greater than those to which they were exposed previously because now they must confront hazardous conditions on the PAFB without the manpower and equipment resources formerly provided by federal firefighters.

According to the Union, the hazardous conditions existing in the “old base” area of the former PAFB include a heavy fire load attributable to closely spaced, multi-level historic buildings of brick construction with slate roofs (Tr. 67-68), hazardous materials (Tr. 95) and the risk of more advanced fires due to large numbers of vacant structures (Tr. 131). In the “new base” area hazardous conditions identified by the Union include multi-level hangers

and flight towers, former munitions areas, old buildings, commercial buildings about which little is known and a large heating plant. (Tr. 73-74, 103, 131, 364-65, 371-72).

Although the City elicited testimony and other evidence to rebut the seriousness of alleged hazardous conditions on the former PAFB identified by the Union (Tr. 96-107, 273-77, 285-90, 352-53, 357-60; City Exhibit 1), the Panel finds, on the evidence as a whole, that current conditions at the former PAFB, which include many diverse structures used for a wide variety of purposes, as well as increasing commercial and residential development, represent challenging circumstances for provision of fire protection and suppression services, especially in the absence of federal firefighter manpower and equipment that previously were available.

Whatever the conditions at the former PAFB, the City argues that firefighters' efforts and exposure to risk resulting from such conditions has been minimal. For example, since June 1995 when City firefighters first assumed primary responsibility for providing fire protection and suppression services to the former PAFB, the City argues that firefighters have responded to calls from the former base a total of only six times and none of those responses involved serious conditions. (Tr. 292-98; City Exhibits 2, 3). The first response concerned an oil spill of less than two quarts; the second involved a mutual aid response to a report of a structure fire that was canceled en route; the third pertained to an investigation that did not reveal any fire; the fourth related to investigation of a hazardous condition involving a tree that had fallen on a power line; the fifth concerned a short circuit of an electrical outlet which required that power be turned off; and the sixth involved an outside

fire in a field which was extinguished. (Id.). In comparison, claims the City, the evidence establishes that during the same period City firefighters responded, on average, to approximately 700 fire calls per year outside the area of the former PAFB. (Tr. 291, 298; City Exhibit 2; Union Exhibit 10.1).

Concerning ambulance rescue services, the City maintains that the evidence establishes that since 1995 City firefighters have responded to a total of only 10 calls for emergency ambulance services at the former PAFB (Tr. 304; City Exhibit 4), compared to a total of approximately 7,500 such calls to other areas of the City. (Tr. 304; City Exhibit 4; Union Exhibit 10.1).

Based on the infrequent requests for fire protection and suppression services and ambulance rescue services at the former PAFB, the City argues that the impact on City firefighters resulting from provision of such services has been negligible and does not warrant remedial action.

Notwithstanding the relatively low volume of calls from the former PAFB for fire protection and suppression services and ambulance rescue services, it is undisputed that under the City's arrangements with PARC, the City firefighters have primary responsibility for providing such services to the entirety of the former PAFB as the need arises. Thus, the City's arrangements with PARC impose a level of responsibility on City firefighters greater than that which existed previously when they served only as backup to federal firefighters in connection with services provided to the base.

Moreover, in addition to an increased level of responsibility and preparedness, City firefighters now must respond to emergency calls from the former PAFB without benefit of substantial manpower and equipment resources that federal firefighters had provided and, with respect to fire calls in particular, without benefit of full-time availability of the City's aerial ladder truck due to the City's reduction of firefighter minimum daily staffing from 8 to 7. Additionally, the backup available to City firefighters when they respond to emergency calls from the former PAFB consists of volunteer firemen who do not have the same level of training as City firefighters and whose response to emergency calls is inconsistent in terms of the number of personnel who may deploy to a scene and their response time.

Consequently, under the City's arrangements with PARC, the responsibility of City firefighters to respond to emergency service calls from the former PAFB has increased and when called upon they must now do more with less. These circumstances, the Panel finds, have an impact on City firefighters that directly relates to safety and indirectly is the result of the decrease in manning and the removal of the aerial ladder truck from the daily complement of available equipment. .

The parties did not place comparative data concerning wages, hours and terms of conditions of employment in the record and did not present evidence concerning the peculiarities of City firefighters' employment in relation to other trades and professions. The City's apparent healthy financial condition, however, and its apparent ability to fund an increase in firefighters' compensation are identified in the record. (Tr. 191, 239-40, 253-54, 256; Union Exhibit 10).

It is the finding of the Panel that the City is in sound financial condition and that it was able to generate additional revenue through the arrangement with PARC to provide fire coverage for the former PAFB. As mentioned previously, the impact of the City's arrangements with PARC and the circumstances under which such arrangements have evolved relate to safety, which has been found to subsequently impact upon compensation [see *City of Batavia and Uniformed Officers Association*, PERB Case IA86-22; Newhouse, Chair, Opinion and Award dated April 10, 1987; also see *City of Niagara Falls and Niagara Falls Fire Department Command Officers Association*, PERB Case IA97-017; Cugalj, Chair, Opinion and Award dated December 17, 1998].

In summary, although there has been an increase in City firefighters' responsibility for provision of fire protection and suppression services and ambulance rescue services to the former PAFB, the manpower and equipment resources available to carry out such responsibility have been reduced - federal firefighters and accompanying equipment and resources have been eliminated. At the same time, the minimum daily staffing applicable to City firefighters has been reduced from 8 to 7, with the result that the City's aerial ladder truck is not always available for service unless special arrangements are made. The Panel finds that these staffing and equipment circumstances place City firefighters at greater risk and subject to an increased workload in the event of fire or ambulance calls at the former PAFB. In order to address such additional risks, accompanied with and attendant to the increased workload, the Panel finds that an award of additional compensation for members of the unit is appropriate.

In determining the appropriate compensation to be paid to unit members for the increased risk and attendant workload, the Panel has considered the compensation paid to the City by PARC for the additional fire and ambulance services provided to the former PAFB. The Panel is also cognizant that it is limited by statute to fashioning a remedy for a two (2) year period. Accordingly, the Panel has focused on the two (2) year period encompassed by the current collective bargaining agreement which commenced 1/1/97 and continues through 12/31/01. Additionally, that two (2) year period has the greatest impact as it represented a dramatic change in the daily work performed and the daily risks faced by unit members.

For the period from 6/1/96 through 9/30/98, the City was paid \$11,000 per month by PARC for such services (see Joint Exhibit 15), and for the period 10/1/98 through 9/30/99, the City was paid \$8,800 per month by PARC for fire and ambulance service protection by City firefighters (see Joint Exhibit 16).

Upon consideration, the Panel finds that all unit members employed during calendar years 1997 and 1998 shall be retroactively paid a safety stipend of \$500 per employee per year for the impact found herein. Such payments shall not be included in the calculation of base pay for salary purposes and shall be considered a yearly stipend provided in 1997 and 1998. No remedy is provided for any impact incurred beyond calendar year 1998.

Accordingly, and based on the foregoing, the Panel finds and makes the following

AWARD

The Panel finds that the agreements between the City and PARC relating to provision by the City of fire protection and suppression services and ambulance rescue services to the former PAFB and the circumstances and conditions under which such agreements have been implemented have had an impact on City firefighters relating to safety as discussed in the Opinion *supra*.

To address such impact, as Remedy, the Panel finds that each unit member employed during calendar years 1997 and 1998 shall receive a stipend of \$500 for each year. No other remedy for any period beyond calendar year 1998 is provided herein.

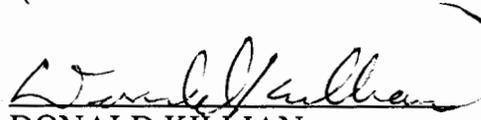
The Panel Chairman shall retain jurisdiction to resolve any and all disputes concerning the implementation of the Remedy provided herein.



 JEFFREY M. SELCHICK, ESQ.
 Public Panel Member and Chairman

9/27/00
 Date of
 Award

(Concur)
 (Dissent)



 DONALD KILLIAN
 Employee Organization Panel Member

9/25/00
 Date

(Concur)
 (Dissent)



 JONATHAN RUFF
 Public Employer Panel Member

11-6-00
 Date

* Please see attached dissent.

Dissent

The dissent is based upon a belief that the decision and remedy of the panel relate to matters not submitted to or before the panel and not consistent with the evidence presented to the panel and not consistent with the panel's own previous findings of facts. The panel previously rendered an Opinion and Award in this matter from which I dissented and then the panel arbitrarily changed its position and findings to the current Opinion and Award. A copy of the previous Opinion and Award signed by the panel members is annexed hereto and incorporated into this dissent by reference. Based upon the foregoing, it is my opinion that the current decision and remedy of the panel is arbitrary, capricious, not consistent with the evidence presented, not consistent with the previous findings of the panel, outside the scope of the panel's power and exceeds the panel's authority.

From the Panel Chairman:

Employer Panel Member Ruff, in his Dissent set out above, now claims that the Interest Arbitration Award is arbitrary and capricious and cites and attaches herein a previous version of the Opinion and Award that he knows was never issued by the Panel. Accordingly, the undersigned Panel Chairman is obligated to clarify the record.

During the Executive Session conducted on 3/2/00, and the Panel deliberations which followed thereafter, the focus was on resolving the instant impact negotiation dispute by increasing the manning of the Fire Department for a period to coincide with the expiration of the collective bargaining agreement on 12/31/01. During those discussions, the Employer Panel Member never raised any objection to the authority of the Panel to reach such a result. After significant discussion, on or about 3/21/00, the Employer Panel Member advised that he could not agree to such result, but again, did not raise any objection to the authority of the Panel to do so. A proposed Opinion and Award was forwarded to the Employer Panel Member on 8/14/00 and his Dissent on the merits was expected. On or about 9/1/00, the Employer Panel Member indicated his Dissent and for the first time, raised the issue that the Panel had exceeded its authority. In response to such claim, the Panel Majority, in order to avoid any potential claim that the Panel acted in an arbitrary manner and exceeded its authority, reviewed the record and determined that a traditional monetary remedy would be more appropriate. The proposed Opinion and Award was never officially issued by the Panel and a revised Opinion and Award, with the monetary remedy, was prepared by the Chairman and sent to the Panel Members for signature. It is this Opinion and Award, signed by the Panel Chairman on 9/27/00 which has been issued. The earlier proposed Opinion and Award, now cited by the Employer Panel Member as evidence of arbitrary and capricious conduct, was never issued by the Panel and is a nullity. The attachment of the proposed and never issued Opinion and Award by the Employer Panel Member is inappropriate and is clearly an attempt to avoid good faith compliance with the Award.

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

On this 27 day of Sep 2000, before me personally came and appeared Jeffrey M. Selchick, Esq., 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.

Cathy L Selchick
Notary Public

CATHY L SELCHICK
NOTARY PUBLIC STATE OF NEW YORK
NO. 4830518
QUALIFIED IN ALBANY COUNTY
COMMISSION EXPIRES NOVEMBER 30 01

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

On this 25 day of Sep 2000, before me personally came and appeared Donald Killian, 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.

Rhonda E Weinberg
Notary Public

RHONDA E. WEINBERG
Notary Public, State of New York
No. 01WE4848467
Qualified in Albany County
Commission Expires 10-30- 2001

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

On this 6th day of Nov 2000, before me personally came and appeared Jonathan Ruff, 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.

Keith A Herkalo
Notary Public

KEITH A. HERKALO
Notary Public, State of New York
No. 4883702
Qualified in Clinton County
Expires 12/10/2001