UFOA & UFA v. City, 9 OCB 14 (BCB 1972) [Decision No. B-14-72 (IP)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

In the Matter of UNIFORMED FIRE OFFICERS ASSOCIATION -and- THE CITY OF NEW YORK	DECISION NO. B -14-72 DOCKET NO. BCB-116-72
In the Matter of UNIFORMED-FIREFIGHTERS ASSOCIATION -and- THE CITY OF NEW YORK	 DOCKET NO. BCB-118-72

INTERIM DETERMINATION AND ORDER

BCB-116-72 is an improper practice proceeding in which the UFOA accuses the City of refusing to bargain in good faith, alleging that the City has agreed to but has refused to reduce to writing a contract clause establishing and maintaining a 3.0 to 3.9 wage relationship between Firefighters and Fire Officers.

The City denies the charge and contends that the wage ratio clause demanded by the Union relates to a prohibited or at best, permissive subject of bargaining. It charges the Union with a refusal to bargain because of the Union's insistence upon bargaining on such a subject.

In BCB-118-72-the UFA claims an agreement to arbitrate disputes regarding the subject matter and the written form of disputed items in the current negotiations-for a collective bargaining agreement between the parties. Included in the-demand for arbitration the Union seeks to have reduced to writing in the collective bargaining agreement-a clause guaranteeing parity between the wage levels of Firefighters and Patrolmen. The City denies the existence of an agreement to arbitrate such questions.

The Board has held seven days of hearings in these matters.

Although the finality provisions of the amended N.Y.C.C.B.L. are not applicable to contracts like those herein which expired on or before December 31, 1970, the Board, nevertheless, deems it has ample authority under the statute to deal with the issues and problems presented in these cases.

The central subject in both proceedings, as we perceive it, is the matter of lock-step contract clauses which guarantee pay parity and/or pay differentials during the term of a contract, hence this joint interim determination although the matters were heard separately.

The UFOA clause provides that the percentage pay differential between Firefighters and the Fire Officers ranks, e.g., 3.0 to 3.9 in the case of Firefighters and Fire Lieutenants, shall be maintained during the term of the agreement and that any change in the Firefighters' salary which may be made during the term of the agreement shall be paid on a percentage basis to the Fire Officers for the same period.

The UFA contends that there is an agreement to continue the provisions of the old contract in the new contract unless modified by agreement of both parties and that the parity clause was a provision of the old contract that was not modified.

The term "parity" in the context of collective bargaining between the City and the Police and .Fire unions has come to have a special usage in recent years. Initially. it referred only to wage equality between Patrolmen and Firefighters. As currently used, it has come to include fixed wage differentials, stated in terms of ratios, as between pay levels in bargaining units within the Police and Fire Departments.

The contract clauses which the Unions seek are Article V of the previous UFOA contract and Article VI of the previous UFA contract. Article V Of the previous UFOA contract deals with wages. Paragraph I sets forth the maximum basic salary for various Fire Officer ranks "in terms of specific percentages of the maximum basic salary of Fireman First Grade." It further provides that "The parties hereto agree that the percentages listed above and those percentages as reflected in the steps of paragraph 2 below shall be maintained during the term hereof." (Emphasis supplied.)Paragraph 2 sets forth the basic salary for Fire Officer ranks and annual increments based on length of service.

Article VI of the previous UFA contract deals with wages, The preamble states.:

> "Adhering to the principle set forth in the 'Report of Special Panel' appointed by Mayor John V. Lindsay, dated October 13, 1968, with regard to Wages on page 24 thereof, it is the intent of the City that the Panel recommendations regarding the relationship between Patrolmen and Firemen that existed prior to October 1, 1968, shall be maintained."
> (Emphasis supplied.)

As we see it, there is no dispute between the Unions and the City over what was substantively intended in the course of collective bargaining as to the amounts of salaries to be paid to Firefighters and Fire Officers. What is in dispute is the form, if any,

this intent was to take in the written collective agreements. The City contends that it is to be limited to the wage scales themselves. The Unions assert that in addition to the respective wage scales, it was to be reflected by continuation of the "parity clause" and "differential clause" found in the prior contracts respectively between the City and the Firefighters and the Fire Officers; and that continuation of those clauses was agreed to not only as reflective of that intent but in order to maintain those relationships for the life of the contracts.

The testimony and evidence a; to the form of the agreement as it relates to wage parity and ratios is sharply conflicting. We. think that the parties may not have been sufficiently explicit or precise with each other, albeit unwittingly so, and as a result different interpretations over what was agreed to developed. However, we find it unnecessary to resolve the sharply conflicting positions of the parties because we are satisfied that there is enough in the record to establish the salaries of the respective classifications for the duration of the contracts. Two significant factors point to this.

he first factor is that the parties agreed, in the course of current contract negotiations, to salary levels based on "comparability bargaining." It is undisputed that the negotiations for the present contracts involved discussions between the City and the Firefighters as to the comparability of the latter's wage scale with that of Patrolmen and the comparability of their respective jobs in terms of importance and service to the community. Indeed, this comparability

was affirmed by the recommendations of the Impasse Panel, dated March 29, 1971, where the wages of Patrolmen and Firefighters were considered together and equal rates of pay for Patrolmen and Firefighters were recommended. Also, the negotiations between the City and the Fire .Officers involved discussions comparing the responsibilities and duties of Fire Officers and the Firefighters they command, as a basis for reaching agreement on a salary differential between them. In short, the Firefighters' rate of pay was agreed to, in significant part at least, because of comparability with Patrolmen; and the Fire Officers' pay scale was reached, in significant part at-least, by comparing the Fire Officers' responsibilities and duties with those of the Firefighters. This practice of comparability bargaining -- reaching agreement on the wages for one group in relation to another -- has been traditional in bargaining between the City and its employees. The continuation of such comparability bargaining is contemplated by the standards outlined in the present statute, Therefore, when Firefighters agree to a salary scale based on comparability with Patrolmen, and Fire Officers agree to a salary scale based on a comparison with Firefighters, those agreements are founded both on an inducement and reliance that, absent substantial changes in the jobs to which they have been compared, the Jointly established wage relationships should not be disturbed during the term of the contracts,

The second factor is historic. For upwards of eighty years the wages of Firefighters and Patrolmen have been equal and for many years the wage differential between Firefighters and Fire Officers has been on the

basis of 3,0 to 3.9. It is undisputed that at no time during the current negotiations was there any effort to change that historic relationship. In the proceedings before us, the City does not contend that there should be any change in that relationship, and has affirmatively stated that it has no intention of altering that relationship during the term of the respective contracts. We note that the differential between Firefighters and Fire Officers is founded on much the same historic precedent and practice, and that this differential was reflected again in the pay scales bargained in the current contract negotiations.

We have no reason to believe the pay relationships thus established will or should be changed during the less than one year that remains of the current contract terms However, this is not to say that this particular system of pay relationships is or should be immutable indefinitely and regardless of future circumstances.

On the other hand, we are also mindful of the extremely costly and disruptive effects of the use of language guaranteeing inconsistent wage ratios in the recent past. Our duty to conform our actions to the public interest requires that the final disposition of this matter be such as will obviate any repetition of the parity spiral. In view of the seriousness of the issues presented, the complexity of the legal questions involved, and the relevance of the yet-to-be completed contracts of other interrelated groups, the Board will not make an immediate decision herein. Accordingly, we have reserved for future decision the issues raised in the instant cases.

With this decision we see little remaining in the way of concluding written contracts. The parties will be directed to resume their efforts to do so forthwith and to complete and implement their written agreements. Any problems they may have in reducing their agreements to written form should be resolved with the aid of their Impartial Chairman.

INTERIM DETERMINATION

Pursuant to the powers vested in the Board of Collective Bargaining by the New York City Collective Bargaining Law, and based on the facts now before us, the Board makes the following interim determination:

1. The issues raised in cases BCB-116-72 and BCB-118-72 are being held by the Board for decision, it being our determination that these issues involve matters to be decided subsequently by the Board.

2. In the meantime, the Board directs the City and the UFA and the UFOA to otherwise conclude written agreements with, if requested by the parties,

the aid of the Impartial Chairman and to implement said agreements forthwith following Pay Board approval where applicable.

DATED: New York, N.
August 2, 1972.

Chairman

Member

Member

Member

Member

Member

Member