

UFA v. City, 11 OCB 7 (BCB 1973) [Decision No. B-7-73]

OFFICE OF COLLECTIVE BARGAINING  
BOARD OF COLLECTIVE BARGAINING

In the Matter of

THE UNIFORMED FIREFIGHTERS  
ASSOCIATION

DECISION NO. B-7-73

-and-

DOCKET NO. BCBI-3-73

THE CITY OF NEW YORK

DETERMINATION AND ORDER

\_\_\_\_\_The Impasse Panel in this matter issued its Report and Recommendations (copy of which is attached herewith and made a part hereof) to the parties on November 1, 1973. The City filed notice of rejection of the Report and Recommendations with the Office of Collective Bargaining on November 16, 1973. On November 19, 1973, the Uniformed Firefighters Association filed with the Office of Collective Bargaining its notice of rejection of the Report and Recommendations.

Both parties have requested the Board of Collective Bargaining to expedite this matter to conclusion. Therefore, the Board has agreed to review the Report and Recommendations of the Impasse Panel "upon its own initiative" as provided in Section 1173-7.0c(4)(a) of the New York City Collective Bargaining Law, and the Union and the City

have agreed to this procedure and further have agreed not to file a notice of appeal.

The standards for review of an impasse panel's report and recommendations as set forth in Section 1173-7.0c of the New York City Collective Bargaining Law were applied by the Board of Collective Bargaining in Decision No. B-23-72 which reads in pertinent part as follows:

"If the impasse panel has afforded the parties full and fair opportunity to submit testimony and evidence relevant to the matter in controversy; unless it can be shown that the Report and Recommendations were not based upon objective and impartial consideration of the entire record; and unless clear evidence is presented on appeal either that the proceedings have been tainted by fraud or bias or that the Report and Recommendations are patently inconsistent with the evidence or that on its face it is flawed by material and essential errors of fact and/or law, the Report and Recommendations must be upheld."

The standards prescribed for impasse panel procedures by Section 1173-7.0c of the New York City Collective Bargaining Law read as follows:

"(b) An impasse panel appointed pursuant to paragraph two of this subdivision c shall consider wherever relevant the following standards in making its recommendations for terms of settlement:

(1) comparison of the wages, hours, fringe benefits, conditions and characteristic of employment of the public employees involved in the impasse proceeding with the wages, hours, fringe benefits, conditions and characteristics of employment of other em-

ployees performing similar work and other employees generally in public or private employment in New York city or comparable communities;

(2) the overall compensation paid to the employees involved in the impasse proceeding, including direct wage compensation, overtime and premium pay, vacations, holidays and other excused time, insurance, pensions, medical and hospitalization benefits, food and apparel furnished, and all other benefits received;

(3) changes in the average consumer prices for goods and services, commonly known as the cost of living;

(4) the interest and welfare of the public;

(5) such other factors as are normally and customarily considered in the determination of wages, hours, fringe benefits, and other working conditions in collective bargaining or in impasse panel proceedings."

Our review of the record of the impasse proceedings herein demonstrates that the panel adhered to the above-quoted statutory standards. We recognize that we are without jurisdiction to make binding determinations on questions of adherence to federal guidelines. The definitive power to test a settlement against the federal guidelines is vested solely in the Cost of Living Council and the panel's Report and Recommendations will be submitted to the Cost of Living Council for review.

CONCLUSION

\_\_\_\_\_ We are satisfied that the panel's procedures and recommendations are consistent with the standards of the New York City Collective Bargaining Law, that they are conceived with due regard to the rights of the parties and in conformity with the New York City Collective Bargaining Law which it is our duty to administer.

ORDER

\_\_\_\_\_ Pursuant to the powers vested in the Board of Collective Bargaining by the New York City Collective Bargaining Law and in accordance with the findings and conclusions of this Board hereinabove set forth, it is

ORDERED, that the recommendations in the impasse panel report shall be final and binding upon the parties, except that those recommendations subject to review by the Cost of Living Council of the Federal Economic Stabilization Program shall be subject to such review and determination. If such recommendations are approved by the Cost of Living Council, said recommendations shall be implemented by the parties

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with all due speed.

If the Cost of Living Council finds that any of the said recommendations cannot be implemented, under the Economic Stabilization Program, the entire matter shall be subject to further review and direction by the Board of Collective Bargaining.

Dated: New York, N.Y.  
November 21, 1973

ARVID ANDERSON  
Chairman

WALTER L. FISENBER,  
Member

EDWARD SILVER  
Member

THOMAS HERLIHY  
Alternate Member

MORRIS IUSHEWITZ  
Alternate Member

WILLIAM MICHELSON  
Member

Note:  
Eric J. Schmertz took no part in this decision.

OFFICE OF COLLECTIVE BARGAINING  
OF THE CITY OF NEW YORK

In the Matter of

THE UNIFORMED FIREFIGHTERS ASSOCIATION

I-105-73

-and-

THE CITY OF NEW YORK

IMPASSE PANEL  
REPORT AND RECOMMENDATION

Prof. Eric J. Schmertz  
Chairman  
Prof. Thomas G.S. Christensen  
Dean Michael I. Sovern

November 11, 1973  
250 Broadway  
New York, New York



"The City will be given the opportunity to have two days for the presentation of its case, with the Union to have the same amount of time if it so desires.

"This stipulation will be so ordered by the Court."

Hearings in this matter pursuant to said stipulation and order and the New York City Collective Bargaining Law commenced on November 7, 1973, and continued on November 8th, 9th and 10th, 1973. The parties were afforded full opportunity to be heard, to present the testimony of witnesses and to introduce evidence in support of their respective positions. The hearings concluded at 10:00 P.M. on November 10, 1973, following a petition by the panel to and the grant by Judge Fine of an extension of the time limit stated in the stipulation and order. The panel then commenced its deliberations and concluded the preparation of its Recommendations by 4:00 A.M. on November 11, 1973 as noted in the acknowledgment below. This extraordinarily short time limit makes impracticable a detailed recitation and analysis of each issue and, though the Panel is satisfied that it fully considered the record before it, this Report is necessarily confined to the essentials.



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LIST OF DEMANDS

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During the course of bargaining, meditation, and ultimately, the fact-finding hearings themselves, the Union reduced its demands and only the following were ultimately submitted to us for decision:

1. The contract term should be one year.
2. The salary of First Grade Fireman should be raised \$2,000 effective July 1, 1973.
3. Each of the four longevity payments called for by the current agreement should be increased from \$100 to \$350.
4. Employees not receiving the 10% night differential should receive a 10% tour differential.
5. The City's contribution to the Union's Security Benefit Fund should be increased from \$250 per annum per Fireman to \$350.
6. The City should supplement its present single Medical Office in Manhattan with four others, one in each of the other four boroughs, and with arrangements to permit members outside the City to consult their personal physicians for the purposes currently served by the Medical Office.

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7. Each Fireman serving a fifteen-hour tour should receive two paid one-hour meal periods plus two paid 20-minute rest breaks. In addition, each Fireman on a nine-hour tour should receive one paid one-hour meal period and two paid 20-minute rest periods.

8. A Fireman injured in the line of duty should be continued on pay status, including overtime if that is appropriate, until he either signs out of the firehouse or his admission to a hospital is recorded by the hospital.

9. The provision for one personal leave day per annum should be increased to two. If departmental scheduling prevents a Fireman from taking his personal leave day during a year, he should be compensated at overtime rates.

THE CITY 'S COUNTER-DEMANDS

The City's counter-demands also underwent changes during the course of negotiations and the subsequent proceedings.

As submitted to us for decision they were as follows:

A. A thirty-month contract with increments of \$200 July 1, 1973, \$600 January 1, 1974 and \$600 January 1, 1975.

B. Article VII of the parties agreement, providing Lieutenant's pay for the full tour to any Fireman who works as a Fire Lieutenant for two or more hours, should be eliminated.

C. The present base figure on health insurance payments and health and hospital benefits should be maintained.

D. The contract provisions governing annual vacation leave should be modified for newly hired Firemen to conform to the general City pattern.

E. The personal leave day should be eliminated for newly hired Firemen.

F. Sick leave for all Firemen should be changed to conform to the City pattern.

G. The present manning provisions should be amended to permit the City to reduce manning on certain pumpers from six-man to five-man complements. These are the pumpers equipped to handle "rapid" or "slippery" water.

H. Present manning requirements should be amended to eliminate the contract provision requiring the manning of the "second vehicle" with two men and to allow the operation of both vehicles by as few as five men.

I. The provision of the contract guaranteeing Firemen one-half hour to maintain their personal fire-fighting equipment, irrespective of the time they return to the firehouse, should be eliminated.

In addition to these demands and counter-demands, each of the parties responded in a variety of ways to the other's proposals. No useful purpose would be served by having a general catalog of the various suggestions of the parties.

We proceed to a consideration of the parties' demands and counter-demands in light of the record and the standards set forth in Section 1173-7.0c(3)(b) of the New York City Collective Bargaining Law.

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WAGES

Extensive economic data and argument were presented by both sides in support of their respective economic positions. We conclude, as did the impasse panel in the negotiation of the parties' prior contract, that a wage increase should be based on "cost of living" increases and productivity improvements. Any increase should also be consistent with the national economic stabilization program. That program accepts as a reasonable standard a 5.5% guideline.

The wage increase we recommend is not only within the 5.5% guideline but is also geared to and dependent on the substantial productivity gains recommended by the panel under the heading Productivity and Economies of operation.

We recommend an increase in the present base wage of \$14,300 for First Grade Firemen of \$700 effective July 1, 1973 and of \$250 effective January 1, 1974.<sup>1</sup>

The cost to the City during the current fiscal year of this Recommendation is equivalent to an annual wage increase of \$825 but is phased in as recom-

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<sup>1</sup>Relevant recommendations apply to Fire Marshals covered by the contract. Lesser wage increases for the second grade, third grade, and appointment ranks shall be fixed in accordance with the formula agreed to and used by the parties in their prior contract or as they may agree otherwise.

mended to relieve the City of the full impact of the increase until it also realizes substantial savings from our Productivity recommendations.

Based on the methods of calculation used by the Cost of Living Council, the foregoing recommendation falls well within the 5.5% guideline.

The contention that the Cost of Living Council "control year" for the parties should be calendar 1973 rather than the contract year beginning July 1, 1973 does not, in our judgment, bar the increase we have recommended. The prior contract's schedule of wage increases was based on an impasse panel recommendation antedating the Economic Stabilization Program. And the last wage increase effective January 1, 1973 under that prior contract was so dated not with a control year in mind (which did not then exist) but rather at a late date to ease the financial impact on the City.

In addition, we have been informally advised by the Cost of Living Council that the "control year" is not necessarily a bar to the wage increase we have recommended to take effect July 1, 1973.

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PRODUCTIVITY AND ECONOMIES OF OPERATIONS

Our productivity recommendations should yield \$6.9 million in annual savings to the City, or \$639 per Fireman based on the current 10,800 man force.

Specifically, we recommend that the present manning by six men of the "rapid" water or "slippery" water pumpers (engines) be reduced to five men. The City acknowledges that this will reduce its manning requirements by 265 Firemen. The Union contends that the number of men dispensed with will substantially exceed that figure and amount to at least 318 Firemen.

Using the City's figures, we conclude that this would produce a savings in personnel costs of \$5,633,900; the Union's figure would result in a savings of at least \$6,760,680. To ensure that we do not overstate the efficiencies to be gained from our recommendations, we have utilized the City's figures in our calculations.

Our second productivity recommendation relates to the manning of the "second vehicle" referred to in Article XXVII, section 6 of the contract, colloquially known to the parties as "Schmertzmen." Under that contract clause, the City is obligated to man the two vehicles referred to therein by no less than a total of seven men (five on the first vehicle and

two on the second). We recommend that the City be permitted to operate the two vehicles with a total complement of five men. The City stated that this would dispense with the need for 60 Firemen. This yields a total annual savings of \$1,275,600.

The two recommendations thus yield a total of \$6,909,500.



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CONTRACT TERM

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As the previous discussion makes clear the City's current departmental arrangements and labor relations policies make it possible for us to be informed and specific about economies of operations and the costs of our recommendations for the current fiscal year. We feel no such confidence about succeeding periods.

As we have been at pains to make clear, we feel keenly our responsibility to justify wage improvements with substantially off-setting gains in productivity. Gains in productivity, however, turn on difficult management decisions and policy judgments which frequently must be made at the highest levels of government. On November 11, 1973, with a new administration only weeks away from taking office, we cannot foresee what changes may be in the offing, and so have no sense for what can prudently be recommended in the way of improved benefits for the fiscal year 1974.

It appears to us that a new mayoral administration should be accorded an opportunity to consider its labor policy and its positions regarding such critical items as productivity, workload, manning and other conditions of employment of the Firemen.

It should not be bound for an extended period of time to conditions mandated by an impasse panel before whom it had no opportunity to appear.

The panel is deeply impressed with the pattern of long-term agreements which this administration through its able Director of Labor Relations, Herbert L. Haber, has achieved. We agree that as a general matter contracts for terms of two years or longer produce greater stability and budgetary foreseeability. It is our hope that the new administration will continue to negotiate contracts of at least the length of recent agreements. Therefore, for the reasons which we have indicated, our recommendation regarding the term of this contract should be recognized for what it is a highly special response to a unique set of facts.

We recommend a contract, the term of which shall be shared equally by the outgoing and incoming administrations, commencing July 1, 1973 and ending June 30, 1974.

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OTHER ISSUES

Having decided on a one-year contract, in part to preserve the new administration's freedom to bargain, it would be inappropriate for us to recommend adoption of many of the parties' far-reaching demands and counter-demands. Accordingly, with the exceptions noted below, we are denying all of the other demands and counter-demands of the parties which have not been withdrawn.

The exceptions fall into two categories - two items involving inequities that should not wait a year for remedy; and several matters as to which the next round of bargaining may be aided by the conduct of studies in the interim.

The first inequity arises from the increasing cost of present City approved benefits purchased by the Union with the City's contribution to the Security Benefit Fund. That contribution has equaled \$250 per Fireman per year since January 1, 1972. The value of that sum has, obviously been eroded by the extraordinary inflation affecting health costs and will continue diminishing during the year for which we are making recommendations.

Accordingly, we are recommending an increase in the City's contribution of \$25 effective July 1, 1973. It should be emphasized that this \$25 plus the wage recommendations made above still will not exceed the 5.5% guideline.

The other inequity was apparent from uncontradicted testimony in the record concerning the fire department's medical office. At present, the department maintains a single medical office in Manhattan staffed by two doctors. All firemen reporting ill must travel to that office, irrespective of their place of residence (including the counties in which they are allowed to live outside the five boroughs), for verification of their illness.

The City recognizes the problem. While we will not require the City to finance four additional medical offices in the other boroughs and take on the added burden of the use of private physicians in the other counties, we recommend that two additional medical offices be established in two other boroughs.

We recommend that the union's demands concerning on-street parking and meal and rest periods be referred for study during the contract term. If the parties are unable

to agree on a study mechanism, the study and formulation of advisory recommendations shall be undertaken by the impartial chairman.

Two technical matters remain to be dealt with.

First, the foregoing recommendations constitute an integral package. For example, the recommended wage increases are tied in significant part to the productivity recommendations. Therefore, it is further recommended that if any of the foregoing recommendations fail of implementation by action of any reviewing body, the Panel shall retain jurisdiction to consider and recommend whatever adjustment may be called for.

Second, we recommend that all provisions of the prior contract, except as modified or changed above, shall be continued in the new contract.

ERIC J. SCHMERTZ  
Chairman

MICHAEL I. SOVERN

THOMAS G.S. CHRISTENSEN

DATED: NOVEMBER 11, 1973

