

Office of Collective Bargaining

In the Matter of
UNIFORMED FIREMEN'S ASSOCIATION, AFL-CIO
-and-
NEW YORK CITY OFFICE OF LABOR RELATIONS
on behalf of the City of New York

Findings of Fact
-and-
Determination
I-4-68

This proceeding, under the auspices of the Office of Collective Bargaining, is between the Uniformed Firemen's Association, AFL-CIO, hereinafter referred to as the "Union", and the New York City Office of Labor Relations on behalf of the City of New York hereinafter referred to as "The City".

The Union and the City, hereinafter referred to jointly as the "parties", have been unable, through direct discussions, to reduce to writing certain negotiated provisions of their current Collective Bargaining Agreement. The difficulty stems from their disagreement, on certain matters, over what in fact was negotiated, or what contract language should be used to express what was negotiated.

The matter was referred by the parties to the Office of Collective Bargaining, and the Undersigned, as a public member of that Office, was appointed to conduct an investigation. During the investigation, and in order to resolve the disputed questions, the parties requested and authorized the Undersigned to make Findings of Fact and Determinations on each matter in dispute. The parties expressly agreed that the Findings and Determinations would be final and binding.

Specifically, the contract provisions over which the parties are in disagreement relate to Adjusted Tours; Personal Leave Day; Vacations; Health & Hospitalization Plans; Out of Title Assignments; Right of Representation; Guarantee of Benefits; Grievance Procedure; Job Description; Ordered Overtime and the "Saving" Clause. All other provisions of the current contract between the parties are not in dispute, and either have been or can be reduced to writing without difficulty.

I see no useful purpose in reciting the adversary contentions of the parties regarding each matter in dispute. Rather, I will confine my Findings and Determinations to what, amongst the disputed items, was negotiated and hence part of the current contract; which items or parts thereof were not negotiated and hence not part of the present contract; and where applicable, what language expresses the substantive matters agreed upon.

Accordingly, having afforded the parties full opportunity to be heard, the Undersigned makes the following Findings of Fact and Determinations:

Adjusted Tours; Personal Leave Day; Vacation

There is no dispute between the parties over their agreement to grant each fireman time off with pay for an adjusted tour of 15 hours each calendar year. Nor is there any dispute over the agreement to grant each fireman one personal leave day of a day tour each fiscal year. Similarly there is no dispute over the agreement of the parties on the quantity of vacation entitlement for the employees involved. These agreements are and shall be part of the current contract.

What is in dispute is what provision was agreed to in the event an employee is not granted or is unable to make use of these benefits during the calendar or fiscal year of his entitlement. I find no agreement that the employees were to receive a cash payment in lieu of the paid time off if they did not take or were not granted the adjusted tour, the personal leave day, or the vacation during the prescribed period. However, the parties did agree that though the employees are entitled to these times off with pay, to be taken normally within the calendar or fiscal years involved, where an employee has not, the end of the calendar or fiscal year is no automatic bar to his receipt of the benefits thereafter, It is recognized that due to the needs and exigencies of the Department a personal leave day off is subject to the approval of the Department. It is my Determination that if an employee does not receive, or because of illness or the needs of the Fire Department is unable to take, these benefits during the applicable calendar or fiscal year, the entitlement may be carried over into, and shall be taken during, the immediate succeeding year, but not beyond.

Out of Title Assignment

From time to time firemen are assigned duties as Acting Lieutenants. I find the parties did not negotiate an agreement to pay the employee involved at the Lieutenant's rate during the periods of that assignment. However, I find the parties reached an agreement regarding certain benefits to which the employee or his beneficiary be entitled if he became permanently disabled or was killed while serving as an Acting Lieutenant. It was my Determination that the

parties agreed that a fireman permanently disabled while serving as an Acting Lieutenant would receive disability benefits based on the Lieutenant's rank; and if killed in the line of duty while serving as an Acting Lieutenant, his beneficiary would receive the death benefit of the Lieutenant rank.

Right of Representation

I find that in the negotiations on this question the parties mutually intended to implement the general principles of due process as expressed in the Miranda Decision of the United States Supreme Court. I find and determine that the parties agreed that an employee who is a "suspect" in a Departmental investigation or trial has the right to be represented either by an attorney or the Union.

The parties further agreed that employees are obliged to answer questions put to them by the Fire Marshall, or his office, in the course of an investigation or interrogation. Employees so questioned and who are not accused are deemed "witnesses". I find and determine that the parties agreed that though a witness is required to cooperate in the investigation of a complaint, statements he has made in the course thereof may not be used against him or used to incriminate him in a subsequent proceeding on that complaint in which he becomes a suspect.

Grievance Procedure

There is no dispute between the parties over their agreement in a three Step grievance procedure and arbitration of grievable and arbitrable disputes. That agreement is and shall be part of the current contract.

The parties also recognized that matters not grievable or not arbitrable could not be processed through the grievance procedure, but rather were appropriate subjects to be taken up with the Department in regular labor-management meetings.

The parties also recognized that certain grievable disputes might be Departmental in nature or of such wide scope as to make adjustment at Steps 1 or 2 of the Grievance Procedure impracticable. I find and Determine that the parties reached an agreement whereby such disputes, provided they are grievable and arbitrable, could be processed by the Union within the Grievance Procedure beginning at Step 3.

Ordered Overtime

I find and determine that the parties did not negotiate any change in existing practices regarding the ordering of overtime at the scene of a fire or the manner in which employees would be compensated for working that overtime. Therefore it is my determination that present practice shall continue to obtain during the life of the current contract.

Continuance of Benefits

I find and determine that the parties did not negotiate a continuance of benefits clause, and therefore none is or shall be part of the current contract.

"Saving" Clause

I find and determine that the parties agreed that if any provision(s) of the contract is declared illegal, invalid or unenforceable by a tribunal of competent jurisdiction, the remainder of the contract will remain in full force and effect.

I find and determine that the parties did not agree to re-negotiate any provision which may be declared illegal, invalid or unenforceable.

Health & Hospitalization Plans

I find and determine that the parties did not agree to or negotiate a provision guaranteeing no reduction in present health and hospitalization benefits, and hence no such guarantee is or shall be part of the current contract.

I do find and determine, however, that the parties agreed that once during the year 1969, on a reopening date selected by the City, the employees would be entitled to choose, amongst the plans offered by the City, the Health & Hospitalization Plan under which they wish coverage.

Job Description

I find and determine that the parties agreed that the City would provide a job description of the duties of a fireman consistent with the arbitration Award of Peter Seitz, Esq. Pursuant to that Award, the Union and the employees are entitled to a description, but the content thereof is an exclusive prerogative of the City. Consistent with the foregoing, I determine that within ten days from this date the City shall provide a job description which shall be part of the current contract. I shall retain jurisdiction over this item for implementation thereof.

Eric J. Schmertz

Dated: New York, N. Y.
April 1968

STATE OF NEW YORK)
 :SS
COUNTY OF NEW YORK)

On this day of April, 1968, before me personally came and appeared, ERIC J. SCMERTZ, to me known and known to me to be the individual described herein and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

Notary Public