
In the Matter of the Arbitration

Between

Uniformed Firefighters Association,
Local 94

and

City of New York

Award
and
Opinion
I-105-73

The Union and City are in disagreement over the precise scope of the "productivity" Recommendations of the Impasse Panel Report and Recommendations(I-105-73) dated November 1973. They have agreed to submit their disagreement to me, as sole Arbitrator for final and binding determination.

The parties waived an oral hearing and submitted their respective positions by briefs.

Having duly considered the entire record before me I render the following Opinion and Award.

The productivity Recommendations of the Impasse Panel dealt with the manning of companies equipped with "rapid water," and with the manning of the "second vehicle" referred to in Article XXVII Section 6 of the prior contract.

The Union contends that the Impasse Panel regarding the Recommendations manning of companies equipped with rapid water is confined to the 53 companies (49 engine companies and 4 squads) which were equipped with rapid water at the time of the impasse Panel hearing and Recommendations. The City asserts that the Recommendations are ongoing, and apply not only to those 53 companies but prospectively to any companies which in the future are similarly equipped with rapid water.

manning of companies consisting of two pieces of equipment or in other words the question of what has been colloquially referred to as "Schmertzmen," the Union contends that it is confined to the 6 of such companies in operation at the time that the Impasse Panel hearings were held and the Recommendations made. The City argues that the Recommendation is applicable to all those two-piece companies which operated during the life of the prior Collective Bargaining Agreement and which are And were covered by the provisions of Article XXVII Section 6. The City states that there were and have been 12 such companies. (Apparently for operational reasons, 6 of the original 12 were discontinued some time after the negotiation of the prior contract and before the Recommendations of the Impasse Panel.)

"Rapid Water" Companies

Based on a review of the stenographic record of the Impasse Panel hearings, I conclude that the City's presentation on this issue was limited to the 53 companies which then, and now, are equipped with rapid water. That presentation, together with a reading of the Impasse Panel Recommendation, which recommended a reduction in the "present manning," which calculated the specific total sum of money to be saved, which calculated the savings per fireman, and which stated the number of firemen positions affected, lead to the compelling conclusion that the Impasse Panel exercised its authority over only those 53 companies which then and now are equipped with rapid water.

"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.

LIST OF DEMANDS

During the course of bargaining, mediation, 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 \$330.
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.

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.

WAGES

Extensive economic data and argument were presented 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.

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-

1/ 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 recommendations 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 11 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.

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 or \$1,276,600.

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

CONTRACT TERM

As the previous discussion makes clear, the City's current departmental arrangements and labor relations policies 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 foresee ability. 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.

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 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.A. CHRISTENSEN

DATED: NOVEMBER 11, 1973

OFFICE OF COLLECTIVE BARGAINING
OF THE CITY OF NEW YORK

In the Matter of
THE UNIFORMED FIREFIGHTERS ASSOCIATION
and
THE CITY OF NEW YORK

I-105-73

IMPASSE PANEL
REPORT AND RECOMMENDATIONS

Prof. Eric J. Schmertz
Chairman

Prof. Thomas G.S. Christensen

Dean Michael I. Sovern

November 11, 1973
250 Broadway
New York, New York

I N T R O D U C T I O N

On November 2, 1973, the Board of Collective Bargaining concluded that negotiations between the above captioned parties were deadlocked and announced that an impasse had been reached. Lists of names of possible members of an impasse panel were sent to the parties on that date, in accordance with the procedures of the NYCCBL.

In the course of proceedings before Justice Sidney A. Fine in Supreme Court, New York County, commenced by the City of New York, the parties entered into a stipulation on the record which reads as follows:

"The Parties to this action have agreed on the following procedures which are to be deemed as an order of this Court.

1. The Uniformed Firefighters Association will immediately return to work.
2. There are to be no threats of job action.
3. An impasse panel, consisting of three impartial members has been agreed upon as follows:

Eric Schmertz, Chairman;
Members: Thomas G.S. Christensen
and
Michael Sovern

"This panel is to commence its deliberations Wednesday, November 7th, at 12 noon, at a place to be designated by the Chairman of the panel. The panel is to render its decision no later than 6 P.M., Saturday, November 10, 1973.

Accordingly the Recommendations were not intended to cover the prospective possibility of equipping additional companies with rapid water, and the manning of those companies when and if they become so equipped. The Union's position on this issue is therefore sustained.

(However it should be clear that the foregoing answers only the narrow question presented to me. It is not despositive of other possible related questions, such as the rights of the parties under the contract and in upcoming bargaining in case of technological changes affecting companies beyond the 53 covered.)

"Schmertzmen"

The Impasse Panel Recommendation on this issue is directly related to and expressly modifies Article XXVII Section 6 of the prior contract. As such it was obviously intended to change the manning, requirements in all circumstances previously covered by that Article.

Therefore the reduction in the manning of two-vehicle companies from 7 (5 on the primary vehicle and 2 on the secondary vehicle,) to a total complement of 5, applies to the manning of any and all companies which now operate or have at any time during the life of the prior contract operated under the coverage of Article XXVII Section 6.

In ocher words the Impasse Panel Recommendation covers not only the 6 companies which were in operation at the time that

those Recommendations were made, but the additional 6 companies which had been subject to said Article when the prior contract was negotiated, even though their operation was discontinued thereafter. Hence the operation of any or all of said 12 companies during the present contract shall be subject to that manning Recommendation, namely that the City be permitted to operate the two vehicles of each said company with a total complement of 5 men.

Accordingly the City's position on this issue is sustained.

Eric J. Schmertz
Arbitrator

DATED: March 18, 1974
STATE OF New York)
COUNTY OF New York)

On this 18th day of March, 1974, before me personally came and appeared Eric J. Schmertz to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledgment to me that the executed the same.