

JEFFREY M. SELCHICK
ATTORNEY - ARBITRATOR
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December 12, 1991

EXPRESS MAIL

Mr. David Donnelly
President, Local 282
Buffalo Professional FF Assn
120 West Chippewa Street
Buffalo, NY 14202

RE: City of Buffalo
& Local 282

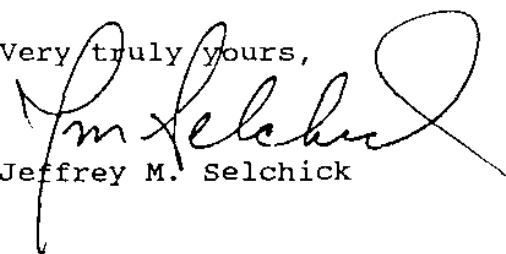
Dear Dave:

Enclosed find an original of the Opinion and Award in the above-cited Interest Arbitration matter.

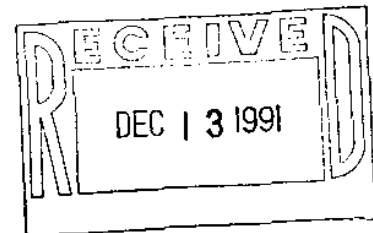
This Award is being filed with PERB today. Please advise when the Decertification Decision is issued so that I may render an Award on the titles involved therein.

Also enclosed is my bill for arbitration services rendered.

Very truly yours,


Jeffrey M. Selchick

cc: Anthony J. Hynes
W. James Schwan, Esq.



STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD
INTEREST ARBITRATION PANEL

In the Matter of the Arbitration	:	
between	:	
	:	
THE CITY OF BUFFALO,	:	
Public Employer,	:	OPINION
	:	
-and-	:	AND
	:	
BUFFALO PROFESSIONAL FIREFIGHTERS	:	
ASSOCIATION, LOCAL 282, AFL-CIO,	:	AWARD
Employee Organization.	:	
	:	
PERB Case No. IA90-018; M90-257	:	
	:	

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

David Donnelly
Employee Organization Panel Member

Richard Planavsky
Employer Panel Member

APPEARANCES:

For City of Buffalo:
Flaherty, Cohen, Grande, Randazzo & Doren, P.C.
Dennis J. Campagna, Esq., Of Counsel

For Buffalo Professional Firefighters Association:
Anthony J. Hynes, Consultant

Wyssling, Schwan & Montgomery
W. James Schwan, Esq., Of Counsel

Pursuant to the provisions contained in Section 209.4 of the Civil Service Law, the undersigned Panel was designated by the Chairman of the New York State Public Employment Relations Board, to make a just and reasonable determination of a dispute between the City of Buffalo ("City") and the Buffalo Professional Firefighters Association, Local 282, AFL-CIO ("Association").

The City of Buffalo is a municipal corporation and the second largest city in New York State. The City covers a land area of 42 square miles on the eastern shore of Lake Erie in western New York. Its population was estimated by the U.S. Bureau of the Census in 1990 as approximately 323,123.

The Association is the certified bargaining agent for most of the non-managerial employees of the City's Fire Department and represents the specified number of employees holding the positions of: Firefighters (659), Fire Lieutenants (127), Fire Captains (43), Battalion Chief (21), Division Fire Chief (4), Chief of Communications (1), Chief Fire Administrator (1), Master of Fire Boat (4), Marine Engineer (5), Assistant Marine Engineer (3), Marine Oiler (1), Fire Dispatchers (4), Assistant Fire Dispatchers (11), Superintendent of Apparatus (1), Superintendent of Alarms (1), and Assistant Superintendent of Alarms (1). The Association currently represents approximately 885 members as contained in the bargaining unit. Reference will be made below to a pending Decertification Petition, which concerns several titles currently in the bargaining unit.

The last collective bargaining agreement between the parties covered the period commencing July 1, 1984 and ending June 30, 1986. Thereafter, the parties have been unable to reach negotiated agreements and utilized the interest arbitration procedure, resulting in an Interest Arbitration Award for the period commencing July 1, 1986 and ending June 30, 1988 (Kell Award), and an Interest Arbitration Award for the period commencing July 1, 1988 and ending June 30, 1990 (Bantle Award).

In June 1990, the parties began bargaining for a collective agreement for the period commencing July 1, 1990 and ending June 30, 1992. After approximately 13 negotiating sessions, the parties were unable to reach agreement, and the Association filed a Declaration of Impasse on or about August 15, 1990.

Thereafter, a Mediator was appointed by the Public Employment Relations Board and mediation sessions were conducted. Efforts at mediation did not result in an overall agreement, and on November 29, 1990, the Association filed a Petition for Interest Arbitration pursuant to Section 209.4 of the Civil Service Law.

The City filed a Response to said Petition on December 12, 1990, and thereafter, on January 17, 1991, the undersigned Public Arbitration Panel was designated by the Public Employment Relations Board.

It must be noted that previously, on November 30, 1989, the City had filed a Decertification Petition with PERB, seeking to remove certain supervisory positions from the bargaining unit. Those positions include Fire Lieutenants, Fire Captains, Superintendent of Fire Alarm Systems, Superintendent of Fire Apparatus, Battalion Chiefs, Division Fire Chiefs, Chief Fire Administrator and Chief of Communications.

Although the Decertification Petition is presently pending before PERB, for the purposes of the instant Interest Arbitration Award, the parties agreed on April 26, 1991, that the instant Panel be empowered to:

1. Consider all evidence and testimony presented at the Interest Arbitration hearing(s).
2. Render and issue a Decision and Award for all classifications not affected by the petition for decertification currently pending before PERB.
3. Render a Decision and Award for all classifications affected by the pending decertification petition, but shall not issue said Decision until decision is rendered by PERB and then only to the extent permitted by the PERB decision.

A hearing was conducted before the undersigned Panel on May 30, 1991 in the City of Buffalo, at which time both parties were represented by Counsel and by other representatives. Both parties submitted numerous and extensive exhibits and documentation, and both parties presented argument on their respective positions. Both parties submitted closing briefs and reply briefs following the hearing.

The undersigned Panel met in Executive Session in Buffalo on November 6, 1991. During that session, a majority of the Panel members reached agreement on this Interest Arbitration Award. The positions originally taken by both parties are quite adequately specified in their hearing memoranda, numerous hearing exhibits, and post-hearing briefs, which are all incorporated by reference into this Award.

Set out herein is the Panel's Award as to what constitutes a just and reasonable determination of the parties' contract for the period July 1, 1990 through June 30, 1992.

In arriving at such determination, the Panel has considered the following factors, as specified in Section 209.4 of the Civil Service Law:

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.

SALARYPOSITION OF THE ASSOCIATION

As is usually the case in interest arbitration, the priority issue in the instant dispute is that of the appropriate salary increase for members of the bargaining unit. The Association is seeking a 9% salary increase effective July 1, 1990, and a 9% salary increase effective July 1, 1991. The Association maintains that such increases are warranted based on comparable salaries received by firefighters in similar cities, due to the extremely hazardous nature of the work performed by Buffalo firefighters, and due to the prior history of increases received by the firefighters when compared to what has been received during the same period by members of the Buffalo Police Department.

The Association argues that the only proper comparables, as required by the provisions of the statute, are those of other firefighters in other New York State cities. The Association maintains that the New York cities of Albany, Rochester, Syracuse and Yonkers are four of the five largest cities in New York State, excluding New York City, and are the most valid comparables. In fact, a Price-Waterhouse study prepared for the City in 1987, found the cities of Rochester and Syracuse to be "most comparable" to Buffalo, in terms of recommending salary increases for positions within the Mayor's and City Controller's offices. Further, the cities of Rochester and Syracuse were used

for comparison by both Arbitrators Kell and Bantle, in rendering their prior Interest Arbitration Awards.

The Association maintains that when the salaries of Buffalo firefighters are compared to those in Rochester and Syracuse, that the Buffalo firefighters salaries were anywhere from .3% to 16.1% behind, depending upon years of service. The Association also points out that Buffalo has a higher cost of living than Syracuse.

When compared to their counterparts in the Buffalo Police Department, to which historically there has always been "parity", it is clear that a Buffalo firefighter is paid significantly less than a Buffalo police officer. That is primarily the result of the award of holiday pay granted to the Police by the Levin Award. A Buffalo police officer also receives night shift differential, and one (1) hour of reporting time per shift. Buffalo firefighters do not receive any night shift differential.

The Association has presented the entire historical documentation of collective bargaining as concerns both the Buffalo firefighters and police. The Association argues that parity had always existed between the firefighters and the police, until an Interest Arbitration Award for the police was issued by Arbitrator Sands for the period commencing July 1, 1988 and ending June 30, 1990. While the Bantle Award for the firefighters attempted to maintain parity, it failed to do so,

and did not take into account the effect of the 1987 Levin Award which awarded the police additional holiday pay.

Finally, the Association indicates that Buffalo firefighters have an extremely hazardous job, as evidenced by the abnormally high numbers of deaths sustained in the line of duty. Between 1983 and 1991, the Buffalo firefighters lost 13 members as a result of fatal injuries received in the line of duty while protecting the citizens of Buffalo. That is a death rate 11.4 times higher than the annual state average. Additionally, for the year 1990, Buffalo firefighters had a 71% injury rate. That does not take into account other inherent risks in firefighting in Buffalo, which as an older industrial city, has a greater number of more serious and severe fires than other comparable cities, such as Rochester, Syracuse and Albany.

POSITION OF THE CITY

The City argues that its economic condition will allow no increase for 1990-91, and that at best, it can provide only a 2% increase for 1991-92. The City maintains that it simply does not have the ability to pay any greater salary increase for the firefighters. The City indicates that it is heavily dependent upon New York State for operating monies and that State aid is down, and will continue to decrease in light of the State's current fiscal deficit.

The City further indicates that Buffalo is a relatively poor city, with less of a property tax base than cities such as Syracuse, Rochester and Yonkers. In response to decreased State aid, the City has increased the property tax, reduced the City's work force by 117 jobs, and made general cuts to its operating budget across the board. The City maintains that it is in deficit spending for the 1990-91 fiscal year, and that any increase to firefighters beyond 2% in 1991-92 will result in further deficit spending. The City is required to maintain a balanced budget.

The economic picture is even worse when it is understood that the City has witnessed a population reduction of nearly 10% over the past decade, and the general business climate in the City is clearly depressed, as evidenced by the increase in numbers of bankruptcies filed by businesses and individuals for the period 1986-90. Furthermore, the general economic outlook for western New York State is down and there has been a significant drop in the value of housing and other residential buildings, resulting in the loss of tax revenues to the City.

The City is in agreement that the proper comparables are Rochester and Syracuse, but maintains that when all benefits and working conditions are compared, that the Buffalo firefighters are appropriately compensated, and do not warrant any significant salary increase. In fact, except for Rochester, which represents the highest paid city in New York State, Buffalo firefighters

fare well in salary when compared to firefighters in Syracuse, Albany, Schenectady, Niagara Falls and even Yonkers, after adjustments for differences in cost of living. The City maintains that the Association's salary proposal is excessive and unwarranted, and should not be granted by this Panel.

The City further argues that while it agrees that firefighting is a difficult, demanding and hazardous job, it has not been established that Buffalo firefighters experience hazards beyond the norm experienced by firefighters in comparable cities. The City indicates that recent updated safety rules will clearly reduce the danger of toxic exposure and other health risks associated with fighting Buffalo fires. In particular, the City points out the recent mandatory mask rule, which will definitely change the frequency of smoke inhalation injuries.

DISCUSSION ON SALARY

It is clear that the proper comparables for Buffalo firefighters must be other New York State cities, such as Rochester and Syracuse. The Panel also is of the view that it must take into account the traditional parity which has been maintained for many years between the Buffalo firefighters and the Buffalo police. Finally, the Panel cannot ignore what salary increases have been received by other employees of the City during the term covered by this Interest Arbitration Award.

The Panel understands that there are many factors that must be considered under the Taylor Law to reach a just and reasonable determination of the proper compensation to be awarded to the firefighters herein. While ability to pay is an important factor that must be given paramount attention, it must be viewed against the importance of maintaining the high level of public safety necessary to protect the citizens of Buffalo. The ability of the employer to provide for salary increases must be balanced with the public safety and welfare, and the obligation to provide Buffalo firefighters with a fair and equitable wage for the important and dangerous work which they perform.

In reviewing the overall salary package enjoyed by firefighters in Rochester and Syracuse, it is apparent that the Buffalo firefighters still fall behind their counterparts in many respects, even when the lunch money benefit is taken into consideration. The City has argued extensively that its financial situation is such that it cannot provide an increase to the firefighters. It cites to its dependence on state aid, which has been reduced, and other factors. The evidence indicates, however, that the other cities in this comparison have similar economies and have also suffered losses in state aid. Nonetheless, these cities have been able to provide increases to their firefighters at the average rate of 6%. Exhibit US-24 indicates that increases in firefighters' salaries throughout the financially strapped Northeast have been in excess of 6% per year for the 1990-91 period. The Buffalo firefighters need a similar

increase to remain at the same comparison level with their counterparts in the region.

The City has managed to give an increase of 5% to other city employees for 1990-91. It would be altogether unfair to leave the firefighters without a similar and substantial increase in light of these facts. No other group of employees, with the exception of the police, have the same significance or impact upon public health and safety. The firefighters risk their lives on a daily basis for the City and people of Buffalo. They are a necessary and essential service, which cannot be equated to the work performed by other City employees, with the exception of the Buffalo police.

The Panel is certainly sympathetic to the financial crisis faced by the City of Buffalo; the local governments of New York State must all be concerned about the seriousness of the fiscal situation that exists here. The City of Buffalo has, however, been on an upswing in recent years and appears to be coming out of its longstanding financial troubles. Nevertheless, the Panel accepts the fact that the City, in order to fund the salary increases awarded herein, will have to review and reassess priorities, and perhaps, take the monies needed to fund firefighters salary increases from other City programs. However, the Panel further believes that the firefighters must be fairly compensated, and must be given priority, as a matter of public safety, interest and welfare, over other less essential programs and services provided by the City.

The fiscal situation for 1991-92 is more difficult to determine. There have been few salary increases awarded as of yet to public employees, and it is difficult to determine what the average of such increases for comparable cities will be.

Yet, financial documents submitted by both the City and the Association indicate that Buffalo's economy is being transformed from a manufacturing based economy to a service based economy, through employment growth in the financial, service and health industries (see for example, Changing Buffalo, Exhibit U-103). The Panel does not find that Buffalo truly has an inability to pay, but rather that it has an "unwillingness" to pay. The City, although it may have to reevaluate and prioritize its fiscal expenditures, is capable of paying the modest salary increase awarded herein for 1991-92. The Panel believes that such increase reflects the general salary increases necessary for Buffalo firefighters to maintain their current standard of living, in view of increased cost of living factors and increases in the cost of necessary consumer goods.

Accordingly, and after consideration of the extensive exhibits, documentation, and testimony presented herein; and, after due consideration of the criteria specified in Section 209.4 of the Civil Service Law, a majority of the Panel, consisting of the Chairman and the Employee Organization Panel Member, do make the following

AWARD ON SALARY

1. Effective July 1, 1990, the base annual salaries of bargaining unit personnel shall be increased by an amount equal to six per cent (6%).

2. Effective July 1, 1991, the base annual salaries of bargaining unit personnel shall be increased by an amount equal to four per cent (4%).

HOLIDAYS

POSITION OF THE ASSOCIATION

Members of the bargaining unit currently enjoy 12 holidays. The Association proposes that a thirteenth holiday, that of Martin Luther King's Birthday, be added. The Association indicates that firefighters in Rochester, Syracuse and Yonkers all receive 13 paid holidays.

POSITION OF THE CITY

The City desires to maintain the number of holidays at 12, but in order to provide consistency with other City employees, the City proposes that Martin Luther King's Birthday be added, and that President's Day be substituted for Lincoln's and

Washington's Birthday. The net result is that the number of holidays remains at 12.

AWARD ON HOLIDAYS

A majority of the Panel finds that it is logical that the holidays enjoyed by bargaining unit personnel be consistent with those enjoyed by other City employees. The Panel also finds that in light of the fiscal package awarded herein, it would be inappropriate at this time to provide for an additional holiday. Accordingly, the Panel accepts the City's proposal to add Martin Luther King's Birthday and to substitute President's Day for Lincoln's and Washington's Birthdays, effective January 1, 1992.

HOLIDAY PAY

POSITION OF THE ASSOCIATION

The Association has proposed that unit personnel should receive a lump sum payment which is equal to four hours' pay at the straight time rate of pay for each of the paid holidays. As provided herein, that number remains constant at 12 per year.

The Association's primary argument on the holiday pay issue is to keep the Association at parity with the Buffalo police, who have already been awarded this holiday pay benefit in the 1987

Levin Award. The Association acknowledges that there are differences between the two units, but contends that the traditional relationship between the two units should be maintained as regards this benefit. Further, the Association argues that firefighters in Rochester, Syracuse, and Albany receive more in holiday pay than that received by Buffalo firefighters.

POSITION OF THE CITY

The City reiterates the present financial condition of the City, and again maintains that it simply does not have the ability to pay for the additional holiday pay sought by the Association. The City indicates that the additional holiday pay benefit would add an additional 2.5% to the budget. It further argues that the Buffalo firefighters receive holiday benefits superior to firefighters in the comparable cities. As to the parity issue, the City contends that the Association wishes to negotiate separately from the police, but inconsistently asks for the same benefits.

The City suggests that there is in fact parity between the police and firefighters in Buffalo in overall terms, and indicates numerous instances where the overall hours worked are not equal when the firefighters are compared with the police. The City maintains that to award the additional holiday pay benefit to the firefighters would upset the relationship which

exists between the firefighters and the police, in terms of benefits received based on number of hours per week worked.

AWARD ON HOLIDAY PAY

A majority of the Panel believes that it is important to retain comparability between the police and firefighters in Buffalo. The two groups have been consistently compared in terms of salary and benefits. Both the Sands Award for the police and the Bantle Award for the firefighters demonstrate this parity interest. That comparison can constitute a benefit at some times, and a burden at others. In this instance, a majority of the Panel, consisting of the Chairman and the Employee Organization Panel member conclude that the parity should constitute a benefit to the firefighters and that they should be awarded the additional holiday pay which was awarded to the Buffalo police by the 1987 Levin Award.

Accordingly, effective July 1, 1990, each member of the bargaining unit shall receive, on or before December 15 of each year, a lump sum payment which is equal to four (4) hours' pay at the straight time rate of pay for each of the twelve (12) holidays.

AUTO ALLOWANCEPOSITION OF THE ASSOCIATION

The Association proposes that the daily car allowance for automobile and gasoline be increased from \$5.50 per day to \$15.00. In doing so, the Association points out that the automobile allowance has not been increased since 1981, while the CPI-U for the Buffalo area has increased from 246.5 in December of 1980 to 365.5 at the end of 1990. The Association argues that in effect, employees who must use their personal automobiles are being asked to subsidize the operation of the City, since inflation has eroded the value of the current auto allowance.

POSITION OF THE CITY

The City acknowledges that there should be an increase in the personal auto allowance, which is paid to Inspectors in the Fire Prevention Division who utilize their own vehicles. The City proposes that the rate be consistent with that paid to other City personnel, and proposes that the rate be increased to \$9.00 effective July 1, 1991.

AWARD ON AUTO ALLOWANCE

Effective July 1, 1991, the personal auto allowance shall be increased to \$9.00 per day.

HEALTH AND DENTAL INSURANCE

Both parties have made several proposals to modify the existing health and dental insurance plans. The City has made proposals to increase the deductibles on health insurance and prescription/drug coverage, and to allow for a switch to an alternate health insurance carrier. The City has also proposed changes in the health insurance benefits provided to retirees. The Association has proposed a change to a different dental insurance carrier.

A majority of the Panel, consisting of the Chairman and the Employee Organization Panel Member, are in agreement that increased costs in health and dental insurance coverage are a reality, and that some changes in the present health and dental insurance enjoyed by bargaining unit members is in order. However, it is the view of the Chairman that such matters should be fully discussed by the parties, and do not readily lend themselves to imposition pursuant to an Interest Arbitration Award. Although it is clear that both parties have proposed changes that are indeed justified and warranted, there has been insufficient investigation and/or discussion on such important, and often, emotionally charged subjects. During the Executive Session held with both Panel Members, the Chairman indicated that it was his opinion that both health and dental insurance modifications should be the subject of further discussion, and hopefully, agreement between the parties.

In light of the willingness of the parties to consider all available options, the Panel will not make an award on health and dental proposals. Rather, the Panel agrees that the parties should meet to discuss and to work towards reaching agreement on appropriate and necessary changes in health and dental insurance coverage and costs.

DURATION OF CONTRACT

The Panel agrees that the term of the contract imposed by this Award should be the Taylor Law's two-year maximum as provided in Section 209.4(c)(vi).

Accordingly, this Interest Arbitration Award shall cover the period from July 1, 1990 to June 30, 1992.


REMAINING ISSUES

The Panel has reviewed in great detail all of the demands and proposals of both parties, as well as the extensive and voluminous record in support of said proposals. The fact that these proposals have not been specifically addressed in this Opinion and Award does not mean that they were not closely studied and considered by the Panel members. In interest arbitration, as in collective bargaining, not all proposals are accepted, and not all contentions are agreed with. The Panel, in reaching what a majority has determined to be a fair result, has not addressed many of the proposals made by each of the parties.

The Chairman is of the view that this approach is consistent with the practice of collective bargaining. Thus, we make the following award on these issues:

AWARD ON REMAINING ISSUES

Any items other than those specifically modified by this Award remain "status quo" as they existed under the 1984-86 collective bargaining agreement and the subsequent Kell and Bantle Interest Arbitration Awards.

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	JEFFREY M. SELCHICK, ESQ. Public Panel Member and Chairman	Date
Concur	 DAVID DONNELLY Employee Organization Panel Member	<u>12/14/91</u> Date
Dissent	<hr/>	<hr/>
	RICHARD PLANAVSKY Employer Panel Member	Date

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

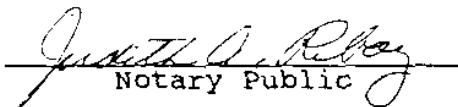
On this day of December, 1991, before me personally came and appeared Jeffrey M. Selchick, Esq., to me known and known to me to be the individual described in the foregoing Instrument, and he acknowledged to me that he executed the same.

Notary Public

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

On this ~~10th~~ day of December, 1991, before me personally came and appeared David Donnelly, 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.

JUDITH A. REBO
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN ERIE COUNTY
Commission Expires April 23, 1993



Notary Public

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

On this day of December, 1991, before me personally came and appeared Richard Planavsky, 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.

Notary Public