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State of New York Public Employment Relations Board Decisions from October 19, 1978

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of THE INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, LOCAL 189, Respondent, -and- CITY OF NEWBURGH, Charging Party.	BOARD DECISION AND ORDER CASE NO. U-3408

VAN DeWATER & VAN DeWATER
by JOHN M. DONOGHUE, for Charging Party

CRAIN & RONES, for Respondent

The charge herein was filed by the City of Newburgh (City) on July 10, 1978. It alleges that the International Association of Firefighters, Local 589 (I.A.F.F.) violated its duty to negotiate in good faith when it improperly insisted upon the negotiation of nonmandatory subjects of negotiation by submitting demands involving such subjects to interest arbitration. Three demands are at issue -- proposed Article 21 entitled "Hazardous Duty Pay", proposed Article 24 entitled "Safety Committee", and proposed Article 39 entitled "Favored Nations' Clause". I.A.F.F. acknowledges that it has insisted upon the negotiation of the three demands by submitting them to interest arbitration, but it contends that all three are mandatory subjects of negotiation. As the dispute is one that primarily raises questions as to the scope of negotiations, we are processing it under §204.4 of our Rules, which dispenses with the Decision and Recommended Order of a hearing officer.

Article 21 - Hazardous Duty Pay

The first disputed demand would provide:

> "Any time that a Firefighter is assigned to work on an apparatus with three (3) Firefighters, the following hazardous duty pay schedule will apply to each Firefighter so effected [sic]: three (3) men: one and one-half (1 1/2) times regular pay; two (2) men: two (2) times regular pay; one (1) man: three (3) times regular pay."

We have already held a comparable demand to be a mandatory subject of negotiation in Orange County Community College Faculty Association, 10 PERB ¶3080 (1977), at p. 3137.

The City argues that this demand is not a mandatory subject of negotiation because it links pay levels to a management prerogative, the number of firefighters the management assigns to a firefighting rig. This argument is based upon a miscomprehension of the nature of the management prerogative and of this demand. A public employer may make a decision unilaterally as to the number of firefighters that it will assign to a rig, just as it may unilaterally determine the number of students that it will assign to a teacher. Once that decision is made, however, an employee organization may insist upon negotiations over demands for terms and conditions of employment that appropriately relate to the impact of the public employer's unilateral action. Thus, the Court of Appeals held in West Irondequoit Teachers Association v. Helsby, 35 NY 2d 46 (1974):

> "The decision whether, say, sections of the fourth grade should contain 25, 28 or 32 pupils is a policy decision and not negotiable; whereas whether the teachers responsible for the sections are to receive varying consideration and benefits depending on the ultimate size of each section as so determined is mandatorily negotiable as a condition of employment."

Article 24 - Safety Committee

> "A general Health and Safety Committee shall be created forthwith consisting of two representatives appointed by the City and two representatives appointed by the Firefighters. The Committee's jurisdiction shall cover all matters of safety and health to the members of the Fire Department, including but not limited to,

> the total number of employees reporting to a fire and the minimum number of employees to be assigned to each piece of firefighting apparatus. The foregoing is intended to be illustrative and not all inclusive. Decisions of the Committee shall be made by a majority of those members present and voting at Committee meetings which shall be held at least quarterly or on special call of any two representatives, provided that each member shall receive at least five (5) days notice by certified mail, of any such meeting. In the event of a deadlock between Firefighters and City representatives, the issue in dispute shall be submitted to binding arbitration in accordance with the procedures set forth above at Article 22, Step 3 and following."

A similar demand was held by us to be a mandatory subject of negotiation in I.A.F.F. Local 273 and City of New Rochelle, 10 PERB ¶3078 (1977), and that determination was affirmed by the Appellate Division in City of New Rochelle v. Crowley, 61 AD 2d 1031 (3rd Dept., 1978). The City argues that the language of the demand here is too broad and might permit the safety committee to set general minimum manning requirements under the guise of a purported safety claim. Although we agree that the language of the demand might be improved upon, we do not find it defective.[1] With regard to the City's concern, the language is indistinguishable from that of the demand in New Rochelle. Moreover, in its brief to us here, I.A.F.F. argues that its demand is not intended to set general manning standards. Nevertheless, if the demand is ultimately accepted or imposed, the parties, through negotiations, or the arbitrator appointed pursuant to §209.4 of the Taylor Law, would do well to clarify the language with this concern in mind.

Article 39 - Favored Nations' Clause

> "This Agreement may be reopened for negotiations, at the option of the union, if any other bargaining unit that negotiates with the City negotiates a contract containing significant cost differences in average per member fringe benefit increases or significant wage increases in excess of those received under existing differential patterns. Any unresolved dispute concerning the aforesaid reopening are [sic] to be submitted to grievance arbitration, pursuant to Article 22 hereof."

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1 See Troy Uniformed Firefighters Association, 10 PERB ¶3105 (1977) and City of Mount Vernon, 11 PERB ¶3049 (1978).

The City argues that this is, in effect, a demand for parity, which the Board has determined to be a prohibited subject of negotiation in City of New York, 10 PERB ¶3003 (1977).[2] We do not agree. This demand is for a contract reopener. The benefits that might be paid to non-unit employees would be a condition for the reopening of the contract solely for the purpose of negotiations by the parties on that subject; the benefits imposed would not apply automatically, as would be required by a parity clause, Mutual Aid Association of the Paid Fire Department of Yonkers, 10 PERB ¶3048 (1977).

NOW, THEREFORE, WE determine that the charge that I.A.F.F. insisted upon the negotiation of nonmandatory subjects of negotiation is without merit, and

WE ORDER that it be, and it hereby is, dismissed.

DATED: Albany, New York
October 19, 1978

Harold R. Newman, Chairman

Ida Klaus, Member

David C. Randles, Member

2 In view of our determination here that this demand is not for parity, we do not consider the implications of the opinion of the Court of Appeals in Niagara Wheatfield Administrators Association v. Niagara Wheatfield Central School District, 44 NY 2d 68 (1978), for the Board decision in City of New York in which Member Klaus dissented.