

BACKGROUND

This dispute involves the negotiations for a successor agreement to a prior contract between the parties which expired by its own terms on June 30, 1975. Negotiations commenced prior to that expiration date and continued without success through March, 1976, at which time the parties declared impasse. On March 25, 1976, PERB appointed Fact Finder Eric Lawson, Jr., and following five days of hearings and the filing of post-hearing briefs Mr. Lawson issued his Fact-Finding Report on July 26, 1976. The findings and recommendations contained therein are a matter of record and no useful purpose can be served by reiterating all of those details here, although it should be noted that the Fact Finder, with respect to salary, recommended for the period July 1, 1975, through June 30, 1976, zero percent increase and for the year 1976-77 a 3.5% increase. On August 10, 1976, the Union rejected the Lawson fact-finding report and demanded compulsory interest arbitration by a panel appointed by PERB. The Union designated then President Patrick Mangan as its member of the panel and cited 22 open issues in dispute for arbitration. (One of those issues, i.e., parity, had been held by PERB to be not a mandatory subject of bargaining in a prior unfair practice determination between these parties, and the issues in dispute were reduced to 21 before the matter came to interest arbitration.) Finally an interest arbitration panel was appointed by PERB consisting of Patrick Mangan, Robert Casey and Rodney Dennis, the latter as neutral member. (Panel I, or the Dennis Panel.)

In the meantime a collateral but highly significant set of proceedings involving the other uniformed service employees of the City, the policemen, was in motion. An interest arbitration panel chaired by Thomas N. Rinaldo, Esq., had been earlier appointed to resolve a dispute between the City and the Policemen's Union regarding a contract that expired June 30, 1975. On August 31, 1976, the Rinaldo Panel issued its Award and Opinion establishing a salary increase for policemen of 5% effective July 1, 1975, for a one-year Agreement to expire June 30, 1976. Thereafter the Dennis Panel held hearings on October 19 and 22, 1976, to take evidence relative to the instant Firemen's dispute. After the hearings extensive executive sessions were held, during which Dennis attempted to mediate a settlement of the dispute. When mediation proved unsuccessful Dennis decided to try a technique known as "final offer selection." He describes his rationale in the Opinion accompanying the proposed Award of Panel I as follows:

"When it became apparent to the Chairman that it was impossible to reach a majority vote on the issues in dispute, he attempted to find some plan that would cause the partisan arbitrators to modify their extreme positions and bring about a majority decision."

Final offer selection is a relatively novel technique but it is commonly understood in labor relations to mean a selection by the neutral arbitrator from one or the other of the parties' last best offers without modification by the impartial arbitrator. On January 25, 1977, the parties submitted their "final offers" to Dennis, focusing almost exclusively upon the question of across-the-board salary increases. In that connection the Union sought a 5% increase effective July 1, 1975, and 4% for the year 1976-77. The City of Buffalo proposed a zero percent increase for 1975-76 and zero percent for 1976-77, although it did seek for its part amendments in the leave and vacation language of the predecessor Agreement.

While the Dennis panel labored, the Award of the Rinaldo panel was undergoing challenges in the court by the City. On February 25, 1977, the Appellate Division, Fourth Department, vacated the Rinaldo award upon motion of the City and directed resubmission of the policemen's dispute to a new interest arbitration panel. Thereafter, on March 11, 1977, Mr. Dennis issued the Award of Panel I, from which both of the partisan members of the panel dissented. In that award the final offer settlement approach was abandoned and neither of the last offers of the parties was selected. Instead, citing as a controlling factor the vacating of the Rinaldo award, Dennis proposed adoption of the Lawson Fact Finder's Report relative to salary, clothing allowance and upgrading of battalion chief, with all other matters in dispute to remain in status quo. Since both of his fellow arbitrators dissented from this "Award," there was in fact no enforceable award rendered by the Dennis panel.

As indicated supra, the parties selected Dana E. Eischen, Esq., together with Robert Casey, Esq., and Carmin R. Putrino, Esq., to serve as a second arbitration panel and Panel II was established by PERB on May 6, 1977. During pre-hearing conferences the panel determined that a voluminous substantive record had already been compiled by the Lawson fact-finding proceeding and the Dennis panel and that the same issues remained unresolved for our disposition. Accordingly, we mandated procedures to expedite development of our record without redundancy or inordinate delay. Therefore, at the first day of hearings on June 2, 1977, we accepted onto our

record in toto the transcribed proceedings and exhibits of Panel I, together with the Lawson Fact-Finding Report and the Rinaldo Award and Opinion. Thereafter the parties in our hearings followed a procedure of updating and modifying where appropriate the positions and evidence presented to Panel I without the necessity of verbatim repetition.

While our proceedings were ongoing, two significant events occurred. On June 6, 1977, the New York State Court of Appeals reversed the earlier vacatur of the Rinaldo Award and reinstated that award. Accordingly, the policemen did in fact receive the 5% salary increase awarded by the Rinaldo panel effective July 1, 1975. Since the Rinaldo award has become inextricably linked with this case, primarily because of the parties' mutual assurances that salary comparability between the uniformed services in Buffalo is a long-standing and mutually preferred tradition, and also because of the far-reaching effect of the Court of Appeals decision upon interest arbitration under the Taylor Law generally, it is worthwhile to quote pertinent portions of that decision herein:

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"Although the Appellate Division confined itself to a consideration of proof of the financial ability of the public employer to pay (Civil Service Law §209, subd. 4, par (c), cl (v), sub. cl. (b)), considerable evidence had been presented to the panel and, earlier, to the fact finder, whose findings of fact and recommendations for settlement go to the panel, on a variety of issues. Included in that presentation was proof on such other vital issues as the comparability of the benefits received by the employees involved in the arbitration proceeding with those of similar employees in public or private employment in comparable communities, the training hazards peculiar to police work and other such matters to which the statute also specifically directed the attention of the panel (Civil Service Law §209, subd. 4, par (c), cl. (v), sub. cl. (a), (c), (d)).

"Before further alluding to the considerations which may have motivated the panel, we note that the source of judicial power to review findings in compulsory interest arbitrations conducted under Section 209, subd. 4, is not to be found in the statute, which itself is completely silent on the matter, but rather in the requirements of due process, so 'that the contract imposed by the arbitrator under the power conferred by statute have a basis not only in his good faith, but in law and the record...' (Mount St. Mary's Hosp. v. Gatherwood, 26 NY 2d 493, 507).

"For such purposes there must be a sufficient form of review. Thus, since the statute here contains detailed standards which are to be considered, though only 'so far as (the panel) deems them applicable in arriving at its determination' (Civil Service Law §209, subd. 4, par. (c), cl. (v)), it is appropriate to review whether that requirement has been followed (Guardian Life Insurance Co. v. Bohlinger, 308 NY 174, 183). And, since, as we only recently had occasion to make clear,

'the essential function of these compulsory arbitration panels is to "write collective bargaining agreements for the parties" (Mount St. Mary's Hosp. v. Catherwood, 26 NY 2d 493, 503, supra), it follows that such awards, on judicial review, are to be measured according to whether they are rational or arbitrary and capricious in accordance with the principles articulated in Mount St. Mary's Hosp. v. Catherwood (supra) (see CPLR 7803, subd. 3, for parallel language)' (Caso v. Coffey, 41 NY 2d 153, 158).

"On this record, it cannot be said that the panel's award was irrational. It was within its province, under the applicable statute, not only to judge the facts but choose the priorities to which, in its judgment, some matters were entitled to over others. It had a right to balance the ability of the City to pay against the interest of the public and the PBA members. Under Section 209, subd. 4, the panel is the one to determine what constitutes 'a just and reasonable determination of the matters in dispute' (Section 209, subd. 4, par (c), cl (v)). It was therefore for it, and not for the courts, to decide what weight to give to each matter vis-a-vis the others.

"It could be argued that a finding of the City's ability to pay based on expectations of increased revenue sharing, or even the availability of grants under Federal public works programs, might be so speculative as to approach irrationality. Even were that position to be accepted, there here remain other identified, non-speculative sources of additional revenue. Beyond any such analysis, however, and most significant, it must be recognized that the statute, the wisdom of which it is for other to decide, vests broad authority in the arbitration panel to determine municipal fiscal priorities within existing revenues. Thus, even if the statute were to mandate consideration of municipal ability to pay (rather than as at present only to identify ability to pay as one of the factors to be taken into consideration 'so far as it deems them applicable'), the panel would still be confronted with responsibility and vested with authority to determine priorities among all relevant factors in a balancing process. The panel might determine that a particular increase in compensation should take precedence over other calls on existing or even diminishing municipal revenues.

"The reviewing court could only inquire whether there was support based on all the statutory criteria. The economic evidence was received in relation to all the 'matters in dispute.' It was the judgment of the majority of the panel that the evidence relating to comparability and other matters dehors the City's ability to pay was such as to require increases in salary. Ability to pay was only one of the considerations to be weighed by the panel. The applicable statute, reading as it does, empowered the arbitrators to conclude that it was not dispositive. What must be assumed is that the City's ability to pay was considered; the opinion of the panel demonstrates a reasonable basis for its determination.

"Conceivably, rare circumstances might arise when the cost of a particular award, when taken against particular economic conditions in a municipality and other relevant factors, would, on review, be found to be irrational. But this is not such a case. Here the Appellate Division should not have drawn its own conclusions from the weight of the evidence or substituted its judgment for that of the arbitrators."

Matter of City of Buffalo v. Thomas Rinaldo, et al - NY 2d - (1977).

The very next day after the Court of Appeals decision in Rinaldo, the Governor signed a two-year extension of the interest arbitration amendment to the Taylor Law which covers Police and Firefighter negotiations (the bill had passed both legislative houses overwhelmingly). The principal changes in the new amendment include elimination of fact-finding as an interim step in the procedure, providing for the parties to share equally the cost of the public member of the arbitration panel, requiring a complete record of the hearings at the request of either party to the dispute with the cost of the record shared equally by the parties, and requiring the arbitration panel to consider statutory criteria and specify the basis for its findings.

DISCUSSION

Throughout the lengthy process of negotiations, mediation, fact-finding, and the earlier inconclusive interest arbitration, the bargaining positions of the parties remained largely unchanged albeit there was some give and take and a tentative modification of proposals and there also was a good deal of backtracking. Inevitably it became clear to the parties that our arbitration proceeding was the end of the line and accordingly much of the jockeying for tactical advantage gave way to the withdrawal of several issues by each of the parties and some limited agreement on other issues. Throughout this dispute and including the presentations to our panel the parties maintained consistent general themes, viz., the Union emphasized inflationary trends, comparability of terms and conditions with firemen in other major cities and with the police force in Buffalo, while rebutting City protestations of inability to pay. The City for its part emphasized its need for increased managerial flexibility in scheduling, particularly with respect to leaves, generally conceded that comparability data would, all things being equal, support some wage increase, but emphasized the dire financial straits of the City and consequent inability to pay any salary increase for the two-year period expiring June 30, 1977. In the context of these general positions each of the parties had presented early in the negotiations specific bargaining proposals for amendments, deletions and modifications of the predecessor contract which expired on June 30, 1975. Upon filing the renewed petition for interest arbitration in April, 1977, which resulted in the establishment of our panel, the Union listed 14 proposals, four of which were withdrawn at the opening session of our hearings. The City referenced eight proposals of its own, four of

which likewise were withdrawn during the opening session of our proceedings. Of those remaining proposals many could be grouped by relationship to a particular issue or a particular clause in the expired contract. Thus the basic matters in dispute before us and the respective positions of the parties may be synopsized as follows:

The Union:

I. Salary and Other Pay Benefits (Proposals 1, 2, 8, 9, 11 and 12)

A. Salary: The Union sought to redefine and restructure the salary schedule by deleting certain language at Article II of the Agreement which provides that the wage schedule "includes the cash value of thirteen (13) paid holidays to be paid at the rate of time and one-half." The Union proposed to "pull out" the cash value of the holidays by disregarding the actual base salary of a fire fighter which was set at \$13,000 and considering that base as \$12,093 for purposes of computing salary increases for the period 1975-1977. Correlatively the Union demanded that henceforth overtime and holidays be paid at the time and a half rate as actually worked. Assuming this restructuring took place, the Union demanded a 7% across the board increase on the \$12,093 base effective July 1, 1975, and an additional 8% effective July 1, 1976, for a contract running through June 30, 1976. Under the Union proposals therefore the fire fighter base salary would be increased to \$13,974.67 by July 1, 1976, and all fire fighters would be paid time and a half for all overtime and holidays actually worked. In its post-hearing briefs filed with our Panel, however, the Union appeared to move away from the proposal for restructuring and sought instead an across the board increase on July 1, 1975, of 5% on the \$13,000 base with an additional 6% on July 1, 1976. These latter salary proposals would have yielded a base salary of \$13,650 during the first year of the contract and effective July 1, 1976, a fire fighter base salary of \$14,469.

B. Clothing Allowance: The expired contract provided at Article XVII for a payment by the City to each employee on or before September 15 of the fiscal year of a \$250 uniform allowance. In these negotiations the Union sought to increase the amount of the uniform allowance. Initial demands were for an increase of \$150 in the uniform allowance, for a total of \$400, but this was later reduced to a demand for a

\$300 uniform allowance in conjunction with the 7% and 8% salary increase proposals. Subsequently, when the Union again modified its salary demands to a 5% and 6% increase, it increased the uniform allowance demand again to \$350.

C. Upgrading Battalion Chiefs: The expired Agreement at Wage Schedule A provided for a salary differential between the officer ranks of Captain and Battalion Chief. Over the years the parties have negotiated flat dollar increases and consequently this differential has been shrinking. The Union in these negotiations sought to widen the differential from the present 5.2% to approximately a 16% differential.

II. Insurance (Union Proposal No. 5)

A. Life Insurance: The present contract at Article XXVIII establishes a group life insurance benefit to be provided by the City with a \$5,000 benefit level, double indemnity for accidental death, and reduced coverage for family members. The Union sought to increase the \$5,000 benefit level to \$10,000, with consequent related increases, and to prohibit the City from changing the insurance carrier without the approval of the Union.

B. Dental Insurance: Under the expired contract the employees are provided with the GHIC Basic Plan "J". The Union sought to change the level of benefits from Plan "J" to Plan "M-1" with the City to pay the full composite cost of the members in the bargaining unit for this increased coverage.

III. Fire Station Security (Union Proposal No. 13):

From the beginning of negotiations the Union pressed a demand for improved fire station security to prevent losses to City-owned equipment and apparatus as well as the personal belongings of the fire fighters. The detailed demand sought new and improved locks, screening, nonbreakable glass, and lockers. During our proceedings the Union modified its demand and indicated acceptance of the Fact Finder's recommendation on this point, to wit., the filing of claims for reimbursement of losses by fire fighters with the Common Council Claims Committee. The Fact Finder had recommended that "language be developed for inclusion in the contract that spells out the manner in which claims should be submitted and careful records kept as to the disposition of said claims."

IV. Timing of Arbitration Awards: (Union Proposal No. 3)

The Union sought inclusion of a contractual provision mandating that payments which are incurred because of an arbitration award must be paid within thirty

days of the date on which the award was promulgated. Before our panel the Union indicated acceptance of the Fact Finder's recommendation that "language be developed which shall mandate the payment of an arbitration award within thirty days of the date of the promulgation of said award unless an appeal is taken to the award."

V. Union Response to City Proposals:

The Union resisted proposals by the City to modify the personal and bereavement leave provisions of the contract, to restructure the fire fighters' schedule into an eight-hour shift, and to convert the present vacation benefits from "weeks" to "hours."

The City:

I. Leaves (City Proposals Nos. 1 and 2)

A. Personal Leave: Article VII of the Agreement provides that each employee is entitled to six (6) days of personal leave with pay each fiscal year. Because of the peculiar scheduling of a fire fighter's work week, i.e., 9-hour and 15-hour tours of duty, cumulating 48 hours each week, latent ambiguities in Article VII relative to whether a fireman's leave "day" should be 8, 9, or 15 hours in length have generated many grievance disputes. In late August of 1975, as part of a quid pro quo relative to the recall of some furloughed firemen, the parties entered into a Memorandum of Understanding which interpreted six days personal leave for firemen to mean a maximum of 57 hours each fiscal year. That agreement was later set aside by a grievance arbitrator when the recalled firemen were again laid off. The City in these negotiations urges that a "cap" be placed upon personal leave days for firemen of 48 hours so that comparability shall prevail with other City employees who work a standard eight-hour day, and further so that the City may reduce its cost of providing personal leave days for firemen.

B. Bereavement Leave: The present agreement at Article VI provides for five (5) working days off for a fireman who experiences death in the immediate family. As presently worded, the agreement does not require that these days be taken consecutively, nor does it define the meaning of "days". The City maintains that the present language lends itself to abuse and consequent costs above and beyond that anticipated when the agreement was originally negotiated. During our proceedings, we pressed the City to reduce its generally-stated demand to specific proposed

contract language which was ultimately received on October 18, 1977, together with the City's post-hearing brief.

II. Vacations (City Proposal No. 6):

The expired agreement at Article IV establishes a vacation schedule with length of vacation determined by years of service and granted in terms of "weeks". The City asserts that because fire fighters work the 9/15 tours of duty, "weeks" for a fireman have been interpreted to mean 48-hour weeks of vacation, rather than 40-hour weeks as for employees who work 8-hour shifts. Again emphasizing comparability and additional expense, the City seeks to have vacations in Article IV redefined in terms of hours, rather than "weeks." Accordingly, in this proposal, for example, the fireman with one year of service would receive 80 hours' vacation, rather than the presently-granted two weeks which, under present practice, translates to 96 hours off.

III. Eight-hour Shift (City Proposal No. 7.)

In lieu of its demands for changes in the Personal Leave and Vacation Sections of the contract, the City postulates that the same end could be achieved with consequent comparability and dollar savings if the present practice of two shifts of 9 and 15 hours each day was changed and the basic work-day redefined as three shifts of 8 hours each.

IV City Response to Union Proposals:

The City, pleading poverty and inability to pay, rejects all demands for salary increases during the two-year term of the proposed agreement, and suggests that the firemen receive zero percent for 1975-76 and zero percent salary increase for 1976-77. The City resists the Union proposal to restructure the wage schedule and instead seeks to have the base salary remain at the \$13,000 through June 30, 1976. Likewise, the City rejects the proposals for time and a half for overtime or holidays as actually worked and the Union proposals for increased life insurance and dental insurance coverage. With respect to fire station security and the timing of arbitration awards, the City maintains that the status quo is acceptable. In connection with the upgrading of Battalion Chiefs, however, the City did respond affirmatively on the last day of our hearings, on August 25, 1977, following which the parties met and arrived at an agreement in principle that the Battalion Chief salary differential should be widened by some 16% above that of the Captain level.

The foregoing sets out the positions of the parties with as much brevity as is possible consistent with full understanding. The voluminous record developed in this proceeding is hardly so terse. Indeed, both parties supplemented their oral arguments with hundreds of pages of transcribed testimony and reams of statistical data, including wage comparisons, financial analyses, and fiscal projections. We have reviewed in detail, and have considered carefully all of the evidence bearing on the matters in dispute. In our deliberations and in formulating our award, we have based our conclusions upon those factors which are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment. Thus, among other relevant factors, we have been influenced by comparison of the wages, hours, and conditions of employment of the fire fighter employees of the City of Buffalo with those of other fire fighter employees in major cities of comparable size and population. We have also focused particularly upon wages, hours, and conditions of employment of the police employees of the City of Buffalo because both parties have conceded that a long-standing and mutually beneficial comparability relationship exists between the wages of the uniformed service employees of the City. Of paramount importance in this case was the interest and welfare of the public in terms of an efficient and highly motivated professional fire fighting force, balanced against the fiscal realities of the financial ability of the public employer to pay. The collective bargaining agreement which expired on June 30, 1975 was made a part of our record as Joint Exhibit No. 1 and has been reviewed carefully with respect to 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. Other antecedent agreements were incorporated by reference in the oral presentations of the parties and have been considered by this panel wherever pertinent.

We have reviewed the positions of the parties and all of the record evidence in light of the foregoing factors. One major conclusion we draw from this analysis is that this panel would be ill-advised to redefine and restructure by arbitration award either the salary system (as sought by the Union) or the work schedule and vacation system (as sought by the City.) In our considered judgment, such changes are too fundamental, with too many potential unforeseen and far-reaching

consequences to be imposed by fiat. Rather, in the absence of compelling evidence of the immediate need for such radical departures from past practice and mutually negotiated language, such modifications are better left to direct negotiations between the parties.

Turning to the question of salary increases and starting from the \$13,000 base salary for fire fighters, we find the evidence persuasive that comparability and the erosion of purchasing power of fire fighter employees support the Union's demands for a wage increase in each year of the agreement. All things being equal, the Union has made out a strong case for an increase higher than that which we ultimately have awarded in this proceeding. But the other major factor which we cannot ignore is the continuing financial difficulty of the City of Buffalo. While the picture is not nearly so bleak as it was some months ago, the City has not yet made a complete recovery from its financial malaise and at the time our record was closed, it had only barely regained marketability for its obligations in the municipal bond markets. We seek to balance the equities favoring a wage increase against the fundamental needs for fiscal integrity in the city administration by structuring this award in such a fashion that the wage increases granted will be in substantial part funded by savings realized through a granting of the City's proposals relative to Personal Leave day and Bereavement Leave. With respect to the amount of salary increase, we recognize that not only the employees, but the City also, have been victims of the rampaging inflation of recent years. We do not propose that the City must insure its employees against depreciation in real earnings, but neither must the employees bear the full brunt both of inflation and of the financial difficulties of the City which were brought about by policies and conditions not of their making. With respect to the City's ability to pay, we are persuaded on the record that the City has available sales tax revenue which exceeded budget estimates and also is expected to receive an increase in state revenue sharing. Given these funds as well as the cost savings realized by the Personal Leave and Bereavement Leave modifications, we are persuaded that the City can pay the salary increases of 5% in each year mandated by this Award. We render a salary increase award at that level fully cognizant of the Rinaldo award of 5% to police employees for the year, 1975-76 and the long-standing tradition of

comparability between these uniform services. With respect to 1976-77, we deem a 5% award easily justified by the economic data on the record before us with respect to comparability and eroded purchasing power. We also bear in mind that a large portion of the financial impact of these salary increases, i.e., the pension related costs will not be directly felt by the City until fiscal year 1978.

Turning to the remaining issues in dispute, we cannot justify any increase in the clothing allowance, the group life insurance benefits, or the dental insurance coverage in light of the above-described salary increases and the admittedly limited resources of the City. We are persuaded, however, of the merit of the Union's argument relative to unilateral change in the insurance coverage by the City. It appears that during the time of its most severe financial difficulties, the City decided to self-insure the employees' group life insurance and, understandably, the employees questioned whether their insurance benefit was any longer meaningful. Nor in the latter stages of our proceedings, did we perceive any serious objection by the City to a condition of Union approval on changes of the conditions or terms of the insurance contract which result in a reduction of benefits. Finally, we noted that the parties reached an agreement in principle on August 25, 1977, relative to contractual provisions for an increase in the Battalion Chief differential and we have incorporated that understanding in our Award. That Award, which in our considered judgment represents a just and reasonable determination of the matters in dispute before us, is hereby rendered.

NEW YORK STATE
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Interest Arbitration

between

PERB Case No. CA-0104;
M-76-82

THE CITY OF BUFFALO

and

DISSENTING OPINION

BUFFALO PROFESSIONAL FIREFIGHTERS
ASSOCIATION, INC. LOCAL 282

I am constrained to dissent from the majority in its award of successive 5% wage increases for 1975-76 and 1976-77 which I feel are not only against the weight of the evidence presented herein, but that such wage increases, in those amounts, are in contravention of the guidelines set forth by the Taylor law both prior to and subsequent to July 1, 1977.

In justifying its award, the majority sets forth long, detailed quotations from the Court of Appeals opinion in City of Buffalo v. Rinaldo et al. _____ N.Y. 2d _____ (1977), characterizing that decision as one of two "significant events" which occurred subsequent to the first arbitration proceeding in this matter. (p.4, majority opinion)

The other "significant event" alluded to by the majority was the signing by the governor of a bill which extended, with modifications, the compulsory binding arbitration process for two additional years on an "experimental basis". (The 1974 enactment expired by its terms on June 30, 1977)

In approving the extension, the governor's memorandum delves into the legislative (and executive) intent of the new statute. It is noteworthy that the governor signed the bill the very day after the court decision in City of Buffalo v. Rinaldo. (supra)

The governor's memorandum quotes from the Court of Appeals opinion in Rinaldo and sets forth how the opinion is modified by the statute.

"The Court also stated:

'(T)he statute, the wisdom of which it is for others to decide, vests broad authority in the arbitration panel to determine municipal fiscal priorities within existing revenues (and to) determine that a particular increase in compensation should take precedence over other calls on existing or even diminishing municipal revenues(.)'

(T)he question of whether the arbitrators' work was rational or arbitrary and capricious is to be answered in terms of how well they carried out the statutory mandate to consider, among other things, the financial ability of the public employer and the comparative levels of compensation (including fringe and retirement benefits) currently enjoyed by the employee affected, and, where the statutory criteria point in different directions, to specify the basis for choosing one over the other.

....This bill is intended to narrow the expansive authority accorded to arbitrators by the Court of Appeals in City of Buffalo v. Rinaldo and to make it clear that arbitrators must make findings with respect to each statutory criterion which the parties put in issue, that each finding must have an evidentiary basis in the record, and that the arbitrators must specify in their final determination what weight was given to each finding and why."

The last three pages of the majority opinion attempt to bring the award contained therein within the purview of the governing statute. In this respect I feel the opinion is deficient.

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The uncontroverted evidence showed that the City of Buffalo has fought a battle for fiscal survival over the past several years. Through drastic cuts in city personnel and general belt-tightening fiscal policies, Buffalo was able to survive its two major problems: 1) a shrinking real property tax base and 2) an exhaustion of taxing power under the condstitution of the State of New York. Only recently has the City been able to market its long-term bonds for capital improvements; only in the current fiscal year has it been possible to eliminate the remnants of a \$17 million deficit, albeit there still remains a technical, multi-million dollar deficit caused by out-of-phase state pension cost payments.

The majority opinion cites potential sales tax revenues as a means of paying the award but does not take into account that sales tax revenue and possibly increased state revenue sharing are offset by increases in non-salary city expenses such as utilities, insurance etc.

To arbitrarily fix the 1975-76 award at 5% to maintain comparability with the policemen is inconsistent with law and effectively attempts to ^sestablish a policiy of parity. Such an expansion of the power of arbitration panels is precisely what the legislature sought to avoid in modifying the extension of compulsory binding arbitration for policemen and firefighters.

Robert E. Casper

CA-0104-m7682

In the Matter of the Interest Arbitration

between

THE CITY OF BUFFALO

and

BUFFALO PROFESSIONAL FIREFIGHTERS
ASSOCIATION, INC., LOCAL 282 I.A.F.F.
AFL-CIO

AWARD OF THE PANEL

December 12, 1977

Dana E. Eischen
Impartial Arbitrator

Robert Casey
City Arbitrator

Carmin R. Putrino
Union Arbitrator

AWARD

In full and final settlement of a dispute between the City of Buffalo, New York and Buffalo Professional Firefighters Association, Inc., Local 282, IAFF, AFL-CIO the Agreement between the parties bearing effective dates July 1, 1974 - June 30, 1975 shall remain in full force and effect until the 30th day of June, 1977, except for the following amendments, deletions and additions:

1. Article II (Salaries and Hours of Work), and Wage Schedule A shall be amended to provide a five percent (5%) increase effective July 1, 1975 and an additional five percent (5%) increase effective July 1, 1976. Ex., the base salary of a Firefighter shall be increased from \$13,000 to \$13,650 effective July 1, 1975 and to \$14,332.50 effective July 1, 1976, with proportionate increases for base salaries of other ranks.

2. Article II (Salaries and Hours of Work), and Wage Schedule A shall also be amended by the addition of the following subparagraph:

"Effective July 1, 1977, the City agrees to pay all employees holding or employed in the rank of Battalion Chief an added four (4) percent of their base salary, as otherwise provided."

3. Article VI (Bereavement Leave) shall be deleted and replaced by a new Article VI reading as follows:

"ARTICLE VI

BEREAVEMENT LEAVE

Section 1.

Bereavement leave shall be granted to any permanent employee who has suffered a death in his immediate family. Such leave will begin from the day of death through and including the funeral or memorial service. However, because of the Firefighters work schedule (4 on & 4 off) the minimum number of bereavement days allowed will be 3 days of 1 trick and the maximum will be 4 days of 1 trick. A trick meaning 4 consecutive shifts consisting of 2 - 9 hour day shifts and 2 - 15 hour night shifts.

BEREAVEMENT LEAVE SHALL BE NON-CUMULATIVE

The immediate family shall consist of the spouse, parents, grandparents, child, grandchild, brother, sister, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, or step relatives and any other relatives of the employee or of his wife (husband) residing in the household of the employee.

Section 2. Bereavement Falling During Vacation or Compensatory Time

Should any employee have a death of one or more of the above listed relatives, such employee shall be entitled to go from vacation or compensation leave to bereavement leave upon notification to his department head. Such notification shall include a phone call to the department head on the day of the death, and a copy of the bereavement notice and verification of the relationship to the deceased immediately upon the employee returning to work. Failure to give proper notice or to produce the requested verification shall result in the effect that the time taken will not be charged to bereavement leave, but to personal or vacation leave."

4. Article VII (Personal Leave) shall be amended by deleting therefrom the words "six (6) days" and inserting instead the words "fifty-seven (57) hours" in the first sentence of Section 1.

5. Article XXVIII (Group Life Insurance) shall be deleted and replaced with a new Article XXVIII reading as follows:

"ARTICLE XXVIII

GROUP LIFE INSURANCE

The City will continue to provide all employees with a group life insurance plan similar to the policy and coverage which was in effect on June 30, 1975 or with such other policy or carrier approved by the Union. The group insurance will provide the following benefits:

- (a) a \$5,000 payment upon death of insured;
- (b) an additional \$5,000 payment if the death of the insured be accidental;
- (c) a \$2,000 payment upon the death of the current spouse; and
- (d) a \$1,000 payment upon the death of each dependent child under the age of 19 years.

Any change in the conditions or in the terms of the contract from those in effect on June 30, 1975 which would result in the reduction of benefits provided herein or previously enjoyed, shall be subject to the approval of the Union."


 Dana E. Eischen
 Impartial Arbitrator

STATE OF New York)
 COUNTY OF Tompkins) ss:

On this 12th day of December, 1977, before me personally came and appeared DANA E. EISCHEN, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.


 ELIZABETH C. WESMAN
 Notary Public, State of New York
 No. 4652438
 Qualified in Tompkins County

Robert Casey
City Arbitrator

STATE OF)
COUNTY OF) SS:

On this day of , 19 , before me personally
came and appeared to me known and known
to me to be the individual described in and who executed the
foregoing instrument and he acknowledged to me that he executed
the same.

Carmin Putrino
Carmin Putrino
Union Arbitrator

STATE OF NEW YORK)
COUNTY OF ERIE) ss:

On this 15th day of December , 1977 , before me personally
came and appeared Carmin Putrino to me known and known
to me to be the individual described in and who executed the fore-
going instrument and he acknowledged to me that he executed the same.

Cheryl A. Hoopie
CHERYL A. HOOPIE
Notary Public, State of New York
Qualified in Erie County
My Commission Expires March 30, 1979