

NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD

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JUL 25 1977

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In the Matter of the :  
Compulsory Interest Arbitration :  
Between :  
CITY OF YONKERS :  
-and- :  
YONKERS FIRE FIGHTERS, LOCAL 628 :  
I.A.F.F., AFL-CIO :  
Case No. CA-0118; M-75-914 :  
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AWARD  
OF THE  
PUBLIC ARBITRATION PANEL

1. For the two-year contract period, July 1, 1975-June 30, 1977, a general increase of \$550.00 is awarded, to be applied to the salary schedule, effective July 1, 1975. Retroactive pay for the two years shall be payable September 1, 1977.

2. This Panel realizes that it may not make an award for a period exceeding two years from the termination of the previous collective bargaining agreement, i.e., June 30, 1977 (Civil Service Law, Section 209(4) (c) (vi).) However, there is nothing in statutory or decisional law that mandates when this Award shall be payable or to which fiscal period it shall be attributable. On the contrary, the New York State Financial Emergency Act for the City of Yonkers, Section 10(2) (Chapter 871 of the Laws of 1975 (Section 2)) specifically provides for deferrals of salary increases upon the condition

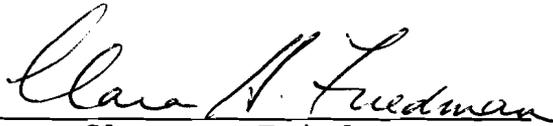
that the parties agree to such deferral. The employee organization has stipulated to the Panel that it is willing to defer payment of this Panel's Award until September 1, 1977. It is upon that understanding that this Award is made.

3. The "Favored Nations" provision shall be deleted from the Agreement, without prejudice to the rights of the parties in the litigation now pending, arising from that clause as it appeared in the prior Agreement.

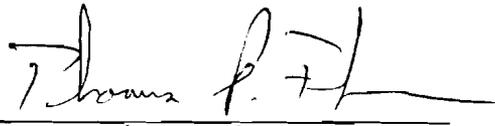
4. No other changes in the parties' Agreement are awarded. All other proposals presented to the Panel by the Fire-Fighters and the City are denied.

5. The Panel notes that the parties' Stipulation of May 18, 1977, covers any effect on base salaries which may arise from the court's determination of pending litigation under the Award of Arbitrator Thomas Newman dated December 16, 1975.

6. The terms of this unanimous Award have been consented to by the City of Yonkers and the Yonkers Fire Fighters, Local 628.

  
Clara H. Friedman  
Chairman

  
Concurring: Wallace J. Brown  
Employer Panel Member

  
Concurring: Thomas Flynn  
Employee Organization  
Panel Member

Yonkers, New York  
May 24, 1977



S T I P U L A T I O N

It is hereby stipulated and agreed by and between the undersigned parties that the Award of the PERB designated Panel in the Interest Arbitration rendered pursuant to Civil Service Law, Section 209,4,(c) shall not be asserted by either party hereto in the pending litigation in the matter of the Arbitration Award of Thomas Newman dated December 16, 1975 and,

It is further agreed that if Yonkers Firefighters Local 628 should prevail in the said litigation, the application to the firefighters' base salary of the Newman Award, as set forth therein, shall not be charged against the Award of the Panel in the Interest Arbitration,

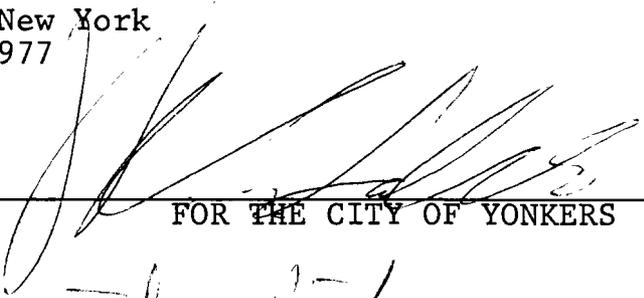
It is further agreed that, in the event the said Newman Award should finally be upheld by the courts as valid, the base salary which existed on June 30, 1975 shall be the base salary as adjusted by the Award of Arbitrator Newman dated December 16, 1975.

It is further agreed that, should the said Newman Award be overturned by the courts, then the base salary of June 30, 1975 shall, for the purpose of the PERB Panel

Interest Arbitration, be the base salary that existed as of June 30, 1975 without being affected or requiring adjustment as recited in the Award of Arbitrator Newman and,

It is further agreed that in the event that the court should vacate the Newman Award and remand it for re-arbitration, then whatever Award results from that re-arbitration shall be applied to the base salary of June 30, 1975 if so provided in the said re-arbitration Award.

DATED: Yonkers, New York  
May 18, 1977

  
\_\_\_\_\_  
FOR THE CITY OF YONKERS

 PRESIDENT  
\_\_\_\_\_  
FOR YONKERS FIREFIGHTERS LOCAL 628

*Approved Eugene J. [Signature]*

NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD

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I.A.F.F., AFL-CIO :  
: CHAIRMAN  
Case No. CA-0118; M-75-914 :  
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MEMBERS OF THE PUBLIC ARBITRATION PANEL:

Clara H. Friedman, Chairman  
Wallace J. Brown, Employer Panel Member  
Thomas Flynn, Employee Organization Panel Member

APPEARANCES:

For the City - Irving T. Bergman, Esq.  
For the Fire Fighters - Belson, Connolly and Belson, Attorneys  
By: John J. Connolly, Esq.  
Nicholas Santangelo, Esq.

PRELIMINARY STATEMENT

This is a proceeding pursuant to Section 209.4 of Article 14 of the New York Civil Service Law. The Public Arbitration Panel held hearings in Yonkers on five days between March 28 and May 16, 1977. Each side submitted numerous exhibits. The parties were afforded full opportunity to present oral and written evidence, cross-examine witnesses, provide oral argument, and support their respective positions.

By mutual consent, the hearings were adjourned on May 16, in order for the parties to resume negotiations in light of the Award of the Public Arbitration Panel issued April 29, 1977, in the matter of the compulsory interest arbitration between the City of Yonkers and the Yonkers PBA. Negotiations between the City and the Fire Fighters, commencing May 16, were concluded on May 18 with an agreement that they would ask the Panel to issue a consent award incorporating their agreement; the Panel unanimously agreed to issue such an Award. The parties also entered into a Stipulation dated May 18, 1977, dealing with the effect on base salaries, if any, of the outcome of litigation pending in connection with the Award of Arbitrator Thomas Newman, dated December 16, 1975.

The parties' last Agreement ran from January 1, 1974, to June 30, 1975. When negotiations failed to produce a new agreement, to be effective as of July 1, 1975, the items in dispute were the subject of a Fact-Finding proceeding before Arthur T. Jacobs, whose Findings of Fact and Recommendations for no increase at all were issued on October 26, 1976. The recommendations were not accepted by the Fire Fighters. The Fact-Finder's findings and recommendations were, however, brought to the attention of this Panel and have been considered by it, along with other evidence in the record.

This Public Arbitration Panel was appointed on February 11, 1977, by Robert D. Helsby, Chairman of the New York State Public Employee Relations Board. The record developed before the Panel consists of a lengthy stenographic transcript and many exhibits.

The Panel in its deliberations has carefully considered the evidence in light of all the criteria for determination set forth in Article 14 of the New York Civil Service Law. These are as follows:

(v) the public arbitration panel shall make a just and reasonable determination of the matters in dispute. In arriving at such determination, the panel may, but shall not be bound to, adopt any recommendation made by the fact-finder, and shall, so far as it deems them applicable, take into consideration the following and any other relevant circumstances:

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. such other factors which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment.

#### BACKGROUND

Yonkers is the fourth largest city in New York State, exceeded in population only by New York City, Buffalo, and Rochester.

The unit represented by the Fire Fighters in Yonkers consists of some 300 firemen. Fire officers are in a separate unit.

The City's mounting financial difficulties have been cited in past collective-bargaining negotiations, particularly in the bargaining which produced the 1974-75 agreement.

In November, 1975, Yonkers' fiscal problems resulted in the State Legislature's enactment of the Financial Emergency Act for the City of Yonkers, (Section 2, Chapter 871 of the Laws of 1975). The basis for the Act was explained therein, in relevant part, as follows:

...a financial emergency and an emergency period exists in the city of Yonkers. The city is unable to obtain the funds needed by the city to continue to provide essential services to its inhabitants or to meet its obligations to the holders of outstanding securities. Unless such funds are obtained the city will soon (i) fail to pay salaries and wages to employees and amounts owed vendors and suppliers to the city, and (ii) default on the interest and principal payments due the holders of outstanding obligations of the city...

This situation is a disaster and creates a state of emergency. To end this disaster, to bring the emergency under control and to respond to the over-riding state concern described above, the state must undertake an extraordinary exercise of its police and emergency powers under the state constitution, and exercise controls and supervision over the financial affairs of the city of Yonkers, but in a manner intended to preserve the ability of city officials to determine programs and expenditures priorities within available financial resources.

The Act created a State Emergency Financial Control Board, required the City of Yonkers to establish a financial plan, and gave wide powers to the Board, prohibiting making or authorizing "an obligation or other liability in excess of the amount available therefore under the financial plan..."

Under Section 10 of the Financial Emergency Act, titled "Wage freeze," salary increases to city employees were suspended as of November 20, 1975. In the same manner, the suspension applied to all post-November 20 increases in holiday and vacation pay, shift differentials, salary adjustments according to plan, and step-ups or increments. The question of whether Section 10 intends a freeze, or a suspension which might be restored retroactively at some future date, is the subject of pending litigation. The Law provided for a one-year wage freeze, which was later extended by the Control Board through June 30, 1977.

Meanwhile, firemen who are eligible for step-up increments and longevity increments have not received any from November 20, 1975, to the present time. Newly-hired firemen, who started at \$11,350 at any time since March, 1975, are still receiving the same salary.

The so-called freeze or suspension is almost coterminous with the contract period which is the subject of this arbitration: November 20, 1975-June 30, 1977 for the freeze, and July 1, 1975-June 30, 1977 for the contract.

Both the 1975-76 and the 1976-77 budgets were governed by the Financial Plan, and a zero deficit was prescribed, as of June 30, 1977. In order to meet budget limitations, numerous economies were imposed, including curtailment of services, reductions in the work force by attrition, elimination of three Fire Companies, and terminations of many City employees.

The City has been successful thus far in meeting the conditions of the Financial Plan, and it expects to realize a zero deficit on June 30, 1977, with the Emergency Control Board ending six months later. But a major readjustment in the City's handling of its finances is required before its

short-term debt can be converted to long-term bonds. To accomplish this, in June of 1976 the State Legislature enacted the Special Budget and Finance Act of the City of Yonkers (Chapters 488 and 489 of the Laws of 1976). Effective July 1, 1977, the Act requires various budgetary restrictions to govern the City's 1977-78 budget.

Against this background it is obvious that the City's financial problems are real and pressing, and that its resources are severely limited.

#### GENERAL SALARY INCREASE

The Fire Fighters, Local 628, proposed a salary increase of 12% commencing July 1, 1975, and a second 12% increase commencing July 1, 1976. It also sought a cost of living adjustment as of July 1, 1976 and October 1, 1976. It based its case on cost of living, comparisons with firemen in other communities and with other City employees in Yonkers, and the special nature of fire fighting.

The City offered no increase at all, chiefly claiming inability to pay.

The Panel has given great weight to the "ability to pay" criterion, in light of the City's unique financial position. Yonkers and New York City are the only two cities in the State which are circumscribed by State emergency control legislation.

However, the equities of the firemen can not be ignored, and the law under which the Panel operates clearly requires it to consider such equities. Yonkers firemen have been without any salary improvement since January, 1975, over a two and one-half year period which has been marked by sharply rising living costs, and by salary improvements for

firemen throughout much of Westchester County and New York State, and even in New York City.

The Panel is required, under the governing Law, to take into consideration such factors as are normally considered in determining wages, hours, and conditions of employment. One such factor is indeed "the interests and welfare of the public and the financial ability of the public employer to pay." But it is not the sole criterion, blanking out all other considerations.

With respect to the first contract year in question -- July 1, 1975 to June 30, 1976 -- the Panel notes that if the parties had been able to reach an agreement timely, its implementation would have been unaffected by the Emergency Control Act or the freeze therein, which began on November 20, 1975.

A salary increase was clearly justified for the firemen on July 1, 1975, in light of the cost of living change which had already occurred since the date of the firemen's last salary change, as well as the still greater increase in living costs looming ahead in the 1975-1976 contract year. Another consideration justifying a salary increase as of July 1, 1975, was the rising level of firemen's salaries, with significant improvements throughout much of the State and County.

Still another consideration not to be overlooked, in determining the equity of salary increases for firemen, is the increased responsibilities which firemen handle, at a time when attrition has cut the size of the work force and a greater number of fires has expanded the workload. An urban community like Yonkers relies heavily on the vital services of its fire-fighting force; the fairness of salary treatment accorded them by a financially-strapped community

is an important reflection of the high regard in which the community holds its firemen.

No claim has been advanced before the Panel that an increase prior to November 20, 1975, would be barred by the Emergency Control legislation. Nor can the Panel believe that such an increase, retroactive to July 1, 1975, would be barred by the Law, inasmuch for one that the teachers' salary increase on November 19, 1975 (pursuant to the terms of their 1974-77 Agreement with the Board of Education of Yonkers) was not barred.

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Taking into account all the considerations, and giving heavy weight as it must to the financial stringencies in the 1975-76 budget, the Panel awards a general salary increase of \$550 annually, applicable to the salary schedule, and retroactive to July 1, 1975.

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This will raise starting salaries for firemen from \$11,350 to \$11,900; top salary, reached after three years, will go from \$14,850 to \$15,400.

Perhaps a larger increase in the 1975-76 contract year might have been in order if the City had been in a favorable financial condition. However, under the difficult circumstances plainly present, any salary award must be moderated strictly.

The Panel notes that the parties' Stipulation of May 18, 1977, covers any effect on base salaries which may arise from the court's determination of pending litigation under the Newman Award dated December 16, 1975.

As for the term of the contract, the Panel agrees with the Fire Fighters and the City that the contract term

should be for two years: July 1, 1975-June 30, 1977. Two-year agreements are typical for this unit. If it were not awarded now, the parties would simply have to repeat the same long process of negotiations, mediation, fact-finding and arbitration.

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Accordingly, the Panel concludes that the term of the contract should be for two years, from July 1, 1975, to June 30, 1977.

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For the second contract year, July 1, 1976, to June 30, 1977, it is extremely difficult to justify a further salary increase, given the financial exigencies and the State emergency controls. Leaving aside the legal question of whether or not the freeze or suspension would permit a salary increase after November 20, 1975, the over-riding question is whether further salary improvement would jeopardize the City's probable fulfillment of financial requirements which will result in a zero deficit on June 30, 1977, and in dissolution of the Emergency Control Board six months later.

On the evidence, the Panel concludes that the interests of the firemen, as well as of the City, will best be served by excluding further salary improvement in 1976-77. This is a very difficult decision to make, particularly when firemen's salaries have not kept pace with rising living costs and with improved salaries in some other communities.

But sometimes a community must mark time. The firemen and the Fire Fighters Local 628, along with everyone in the City, have a vital stake in ensuring the success of the City's Financial Plan. This is an extraordinary time in the City's fiscal fortunes, and it requires the extraordinary measure of foregoing any salary improvement in the second

contract year, beyond that awarded retroactive to July 1, 1975.

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Accordingly, the Panel awards no additional salary increase for the second contract year, July 1, 1976, to June 30, 1977.

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#### OTHER PROPOSALS

In view of the City's limited financial capacity, the Panel concluded that any monies awarded should go to a general salary increase.

Whether or not there is merit in any of the proposals for contract improvements which the Fire Fighters made, the evidence demonstrated no compelling necessity for such changes at this time. Any improvement in other economic terms of the contract could only diminish the size of an already limited improvement in basic salary schedules.

The City has presented various proposals which largely seek to diminish or cut back on existing conditions. Whether or not there is merit in any of the proposals, sufficient and compelling evidence to justify them has not been provided at this time.

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Accordingly, the Panel denies the proposals for contract changes sought by the Fire Fighters and also those sought by the City, with one exception: the Panel concludes that the "Favored Nations" provision shall be deleted, without prejudice however to the rights of the parties in the litigation now pending, arising from that clause as it appeared in the Agreement for January 1, 1974-June 30, 1975.

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### THE BASIS FOR THE CONSENT AGREEMENT

The Panel's Award notes that the terms of its unanimous Award have been consented to by the City of Yonkers and the Yonkers Fire Fighters, Local 628.

In extending that consent, the parties acted both with selfless judgment for the interests and welfare of the public and with proper self-interest for the welfare of their respective constituents, the City on the one hand and the firemen on the other. The fact that both public interest and self-interest coincide in this proceeding arises from the impact of the Award of the Public Arbitration Panel in the compulsory interest arbitration between the City and the PBA, on April 29, 1977.

This Panel has followed the same reasoning expressed by the Panel in the PBA case, and has reached the same conclusions, both because of the virtual identity of salary structures and salary history in the two bargaining units, and the fact that each of these uniformed forces perform vital services at the constant risk of their lives and personal safety. Whether or not identity of salary treatment for these two units should or will prevail in future years, it is clear that it has applied in recent years and it is in order for the contract period of 1975-77.

Once the Award in the PBA case was issued, while the arbitration hearings in the Fire Fighters case were still underway, it was a matter of common sense for the parties to consider their situation in light of the PBA Award. The fact is that the PBA Award gave rise to certain parameters, which were accepted by the City and also by the Financial Emergency Control Board.

The binding Award in the PBA case cleared its last hurdle when it was unanimously approved by the Emergency

Financial Control Board of the City of Yonkers on May 12, 1977. The Board's resolution included the following:

RESOLVED, that the deferral of the wage increase awarded by the public arbitration panel as a term and condition of employment of the Yonkers PBA for the period from July 1, 1975 through June 30, 1977 is hereby certified by the Board as being an acceptable and appropriate contribution toward alleviating the fiscal crisis; and it is further

RESOLVED, that such award is approved as a term and condition of the collective bargaining agreement between the Yonkers PBA and the City of Yonkers for such period;...

The 1977-78 Budget, presented by City Manager Vincent R. Castaldo on May 13, 1977, included the following comments:

May I add that as part of this Budget provisions have been made for salary adjustments for City personnel based upon the recent PBA binding arbitration award. That award, which will be the basis of the City's analysis of salary adjustments, was made for the period July 1, 1975 to November 19, 1975, and for those bargaining groups whose contracts expired on June 30, 1975 it will be applied in a manner as with the PBA. I have also made provisions for salary modifications for other groups effective July 1, 1977; caution is called to the fact that prudent bargaining must take place to insure the City's continued fiscal health.

...much of my administration's efforts and much of the Council's deliberations thus far have concerned themselves with the restoration of the City's fiscal health. With the Council support that I have received, I believe that the patient (the City of Yonkers) has recovered completely from the deathbed of fiscal bankruptcy. This is not to say that we are free of all fiscal problems remaining to be solved, for some still

remain, but those problems which can be controlled, are, and have been controlled, and those which are out of the realm of our responsibility to be resolved, such as the teachers' court case, to those we can only react to their materialization and impact.

Much has been accomplished over the past eighteen months and we still have a long way to go...The Budget proposes additional measures of economy whereby greater service will be provided for the taxpayers' dollars, but the fiscal practices of the past which brought us to our knees are gone and I believe that we in Yonkers can be proud of ourselves in that this City has survived a period which, hopefully, few cities will ever face.

It is unfortunate that the national news media does not recognize our fiscal recovery in an equal measure as they did when we were at default's door, for it is an unfortunate circumstance of this society that disaster is newsworthy and recovery is not. I say now, however, that our survival and our fiscal reincarnation is an accomplishment that belongs to you, our citizens, our legislators and our employees who demonstrated on numerous occasions and in various ways that Yonkers would indeed survive, for not to survive fiscally would have inherently meant that we could not survive as a growing and socially viable community. We passed our first test...

It is my fervent hope that all Yonkers residents make a concerted effort to recognize the many social problems which we mutually face and that a responsive, humane effort be made on the part of all to solve.

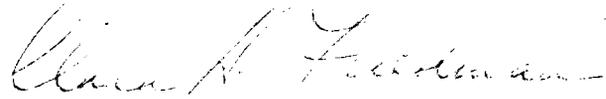
We have demonstrated in the last eighteen months that many of our seemingly unsolvable problems can be solved when a dedicated effort is made by all to address

these problems in a responsible and progressive manner...

Thus, the PBA Award has received the concurrence of the Employer Panel Member, the statutorily-required approval of the Emergency Control Board, and the budgetary approval of the City Manager.

In this Fire Fighters case the parties had the choice of continuing the hard-fought arbitration proceedings, with an expensive expenditure of time, energy and money -- or of making an effort to negotiate a viable settlement. It is to their credit that they were able to reach an agreement, which the Panel unanimously finds is within the controlling parameters, and thus can issue as a Consent Award.

The parties have rendered a service to their constituents, to the general public, and also to the New York State Public Employment Relations Board in terminating what would otherwise have been prolonged and expensive arbitration proceedings, and in reaching agreement within a viable framework. Although the City might have preferred a smaller salary increase, and the Fire Fighters certainly wanted a greater salary increase, their agreement in light of all the circumstances speaks well for their collective-bargaining sophistication and skill. And it makes a significant contribution to the continuing vitality of the Taylor Act.



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Clara H. Friedman  
Chairman

New York, New York

May 24, 1977

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

On this 24th day of May, 1977, before me personally came and appeared CLARA H. FRIEDMAN, to me known and known to me to be the individual described herein and who executed the foregoing instrument and she duly acknowledged to me that she executed the same.

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JOHN J. [unclear]  
NOTARY PUBLIC  
Commission Expires [unclear] 1978