

State of New York Public Employment Relations Board

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In the Matter of Interest Arbitration :  
Between :  
CITY OF YONKERS :  
And :  
YONKERS FIRE FIGHTERS, LOCAL 628 :  
INTERNATIONAL ASSOCIATION OF :  
FIRE FIGHTERS, AFL-CIO :  
PERB Case Nos. IA-24; M77-332 :  
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Before **CONCILIATION**  
PUBLIC ARBITRATION PANEL  
Herbert L. Marx, Jr.  
Public Panel Member and  
Chairman  
Thomas F. Carty  
Employer Panel Member  
Thomas F. Flynn  
Employee Organization  
Panel Member

October 16  
, 1978

**APPEARANCES**

For the City

Irving T. Bergman, Esq.  
Special Counsel for Corporation  
Counsel  
J. H. Christiansen  
Personnel Commissioner  
John F. Kondzielaski, City Assessor  
Dr. Elliott Palais, Director  
Youth Services  
Martin Moran, Budget Director  
Richard S. Smith, Deputy Chief  
Neil Curry, Captain

For the Union

John J. Connolly, Esq.  
Belson, Connolly and Belson  
Ed Harty, House Representative  
John Longo, Trustee  
Joseph Napolione, Trustee  
Richard Ruyack  
Dan Sabol, Chief House Representative  
Ken Spatta, Vice President  
Louis Tomaselli, Secretary

## O P I N I O N

This matter was heard and resolved as directed by the State of New York Public Employment Relations Board under the terms of statutory provisions applicable to compulsory interest arbitration pursuant to Civil Service Law, Section 209.4, as amended July 1, 1977. At issue are certain terms of a new collective bargaining agreement to be effective as of July 1, 1977, between the City of Yonkers (the "City") and the Yonkers Fire Fighters, Local 628, International Association of Fire Fighters, AFL-CIO (the "Union").

Under required procedure a three-person public arbitration panel (the "Arbitrators") was designated to hear the dispute and render an award. After due notice, a preliminary meeting was held by the Arbitrators with the parties on March 23, 1978. Subsequently, hearings were held on April 18, April 19, and May 19, 1978, for which a stenographic record was prepared. The parties were given full opportunity to present evidence and argument and to examine and cross-examine witnesses. The Arbitrators also met with the parties on April 27, 1978, as a result of which a unanimous Interim Award of the Public Arbitration Panel covering five items in dispute was issued on that date. (Further reference to the Interim Award is found below.) The Arbitrators met in executive session following each hearing and also on July 5, 1978. The City filed a timely post-hearing brief on two matters before the Arbitrators, and the Union received a copy thereof.

In addition to and as part of arguments by the parties, the Arbitrators

gave due consideration to the following factors, as they may be applicable, in reaching their determinations:

- 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 interest 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.

The financial plight of the City of Yonkers does not require much elaboration here, although the brevity of reference is not intended to underplay the seriousness of the situation. The background is fully and effectively delineated in the Opinion dated May 24, 1977, of Chairman Clara H. <sup>W</sup>Friedman of the Public Arbitration Panel constituted to resolve the dispute between the same parties for an agreement commencing July 1, 1975.

Despite the financial stringencies of the City, including continuing jurisdiction by the Yonkers Emergency Financial Control Board, collective bargaining between the City and unions representing various groups of its employees has been concluded with respect to the period beginning July 1, 1977, which is of particular concern to the Arbitrators.

For employees represented by the CSEA of Yonkers, a \$1,000 annual general increase was negotiated, effective July 1, 1977, as part of a two-

year agreement commencing July 1, 1976. For those represented by Teamsters Union, Local 456, in an agreement covering the period from July 1, 1975, through June 30, 1978, employees earning more than \$10,000 received a general increase of \$2,000, and employees earning less than \$10,000 received a general increase of \$1,000, effective July 1, 1977.

Through a Public Arbitration Panel award dated February 25, 1978, Yonkers police officers received, effective July 1, 1977, a general salary increase of \$2,000, and, effective January 1, 1978, a five per cent night differential.

It was in consideration of these factors, among others set forth at the hearings, that the Arbitrators issued their findings in the Interim Award dated April 27, 1978, and which are included herein as Items Nos. 1-5 in the Award.

Following issuance of the Interim Award, it was determined that there remained two further issues for consideration and determination by the Arbitrators. These were as follows:

1. A proposal by the City that there be deleted from the new agreement, Article II, Section 3, third paragraph of the December 17, 1973, Agreement between the parties, which reads as follows:

Overtime assignments shall be so distributed so that Fire Fighters shall receive three-fourths (3/4) of overtime assignments. Said assignments shall be reviewed on a periodic basis to see that the ratio is being maintained.

2. A proposal by the City that Fire Fighters hired on and after January 1, 1978, shall contribute toward the cost of the health insurance program maintained by the city for its employees, 35 per cent for the family plan and 50 per cent for the individual plan.

Distribution of Overtime Issue

The parties agree that the meaning of the cited provision is that, of all overtime work given to Fire Fighters and Fire Officers added together, Fire Fighters shall received three-fourths of the total.

The Union presses for continuation of the provision, pointing out that overtime is controlled -- for either group -- by the number of vacancies which are permitted to exist by the City. Thus, if vacancies exist for a longer period in one group (Fire Officers) than in the other group (Fire Fighters) the amount of overtime worked by Fire Officers will increase disproportionately. (The reverse would be true if Fire Fighters' vacancies are permitted to exist longer than Fire Officers' vacancies.) The Union seeks to maintain what it sees as "protection" to insure fair treatment, and states that this particular provision does not handicap the City in its determination of the size of the fire-fighting work force.

The City seeks elimination of the provision on several grounds. First, it finds it an unnecessary restriction in its ability to operate its fire-fighting force efficiently. Second, it unnecessarily imposes a tandem relationship between two separate groups of employees, and the City is making strong efforts (successful in several other instances) to cut these dependency ties. Third, the three-fourth figure which may have been mathematically appropriate at one time is no longer viable. This is due to the fact that it is no longer true that fire fighting forces are always assigned to teams on a one-officer-to-three-fire-fighters basis.

As to the mathematical argument set forth by the City, the Arbitrators agree, and this will be reflected in the Award. As to the general desirability

of the provision itself, the Arbitrators would readily concur with the City that it would be inappropriate to add such a restrictive clause to the agreement, especially in the current atmosphere of retrenchment and cost reduction. But that is not the issue before the Arbitrators; the clause has been in effect since at least 1973. It was at one time part of a mutually agreeable bargain, possibly involving concessions on other matters by one or both parties. If it is to be removed altogether, it would seem more appropriate for the two parties to reach an acceptable bargain to do so; but it is not a desirable function of a third party simply to carve out a provision which one party no longer finds palatable.

Further, with the change as directed by the Arbitrators, the City will have sufficient flexibility to be able to avoid difficulties any more serious than those when it first agreed to the clause.

#### Employee Contribution to Health Insurance

The City was successful in winning the new contributory language in its agreements with other employee groups, either through negotiations or as a result of arbitration. No employees hired prior to January 1, 1978, will be adversely affected. The savings will come only from newly hired employees, who will be aware of their obligations from the time they commence work.

As a future offset to the rising costs to the City for wages and fringe benefits, this proposal seems desirable.

Having considered all the evidence and argument, and in line with the criteria outlined above, the Arbitrators make the following

## A W A R D

The parties shall make the following changes in their collective bargaining agreement so as to provide a new agreement for the period from July 1, 1977, through June 30, 1978:

### 1. SALARY

Effective July 1, 1977, there shall be an increase across the board of \$1,614.98 per annum for all Fire Fighters in the bargaining unit. This increase shall be applicable to each step on the present salary schedule with the exception that the starting salary shall be \$12,198.39 and the present increment at the ninth month shall be eliminated.

Pursuant to the above, the Salary Schedule for Fire Fighters effective July 1, 1977, shall be:

Start	\$12,198.39
Upon completion of one year	15,900.87
Upon completion of two years	16,650.87
Upon completion of three years	17,400.87

### 2. NIGHT DIFFERENTIAL

Effective January 1, 1978, a Night Differential shall be paid at the rate of .0333 of the annual salary to be applied to regular straight-time rate of pay as shown in schedule in 1. above. The Night Differential shall be paid only to Fire Fighters actually working the tour commencing 6:00 p. m. and ending 8:00 a. m. This differential shall be paid only for Fire Fighters who work the full tour.

### 3. CLOTHING ALLOWANCE

Effective July 1, 1977, there shall be an increase in the Clothing

Allowance of \$100 per year per man.

4. PERSONAL LEAVE DAYS

The parties were at impasse on an item of the number of personal leave days for new employees. There was a desire on the part of the City to reduce the number of personal leave days for new employees as of January 1, 1978, from the present four days in the Agreement to two days. The Arbitrators strongly urge and recommend that the parties continue to negotiate this item.

5. CHECK-IN TIME

Each Fire Fighter shall be present at his assigned command for duty 12 minutes prior to the commencement of his tour of duty for receipt of instruction, equipment and/or uniform inspection. Each Fire Fighter shall receive an additional 5½ days' pay per year for this (2 3/4 days' pay for 1977), which said additional payment shall be earned as of the first day of each year. Payment shall be made on a semi-annual basis in January and July for the preceding six-month period.

6. OVERTIME DISTRIBUTION

Article II, Section 3, third paragraph, of the December 17, 1973, Agreement between the parties shall be changed to read:

Overtime assignments shall be so distributed so that Fire Fighters shall receive an approximate proportion of overtime assignments consistent with the ratio of duty posts (other than staff positions) of Fire Officers and duty posts of Fire Fighters. This ratio shall be that existing each January 1 and July 1. Said assignments shall be reviewed on a periodic basis to see that the ratio is being maintained.

7. HEALTH INSURANCE CONTRIBUTION

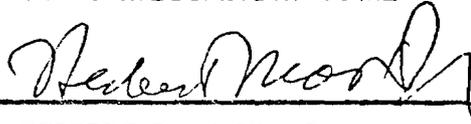
All new employees in the bargaining unit hired on and after January 1, 1978, will contribute toward the cost of the Health Insurance program for which they become covered, to the extent of 35 per cent of the cost for family coverage or 50 per cent of the cost for individual coverage.

8. OTHER PROPOSALS

All other proposals raised by the City or the Union in reference to the one-year agreement commencing July 1, 1977, shall not be included in such agreement.

DATED: October 16, 1978

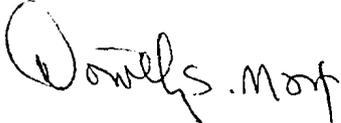
PUBLIC ARBITRATION PANEL



HERBERT L. MARX, Jr.  
Public Panel Member and Chairman

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

On this 16th day of October, 1978, before personally came and appeared Herbert L. Marx, Jr., 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.



DOROTHY S. MARX  
Notary Public, State of New York  
No. 31-4611634  
Qualified in New York County  
Commission Expires March 30, 1979

(Signatures of Employee Organization Panel Member and Employer Panel Member on following page)

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THOMAS F. CARTY  
Employer Panel Member

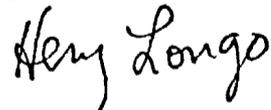
Concurring on Items #1,2,3,4,5,6, & 8  
Dissenting on Item # 7



---

THOMAS F. FLYNN  
Employee Organization Panel Member

HENRY LONGO  
NOTARY PUBLIC, State of New York  
#60-7592815  
Qualified in Westchester County  
Term Expires March 30, 1980



I concur except as to No. 6, failure to delete from the contract, Article II, Section 3, third paragraph, from which I Dissent.

*Thomas F. Cart*

THOMAS F. CARTY  
Employer Panel Member

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THOMAS F. FLYNN  
Employee Organization Panel Member



Thomas F. Carty  
Dissents in part only as to the failure  
to delete from the contract  
Article II, Section 3, third paragraph

DISSENTING OPINION OF  
THOMAS F. CARTY

We must recognize the problems in logistics, efficiency and economy that result from restrictions imposed by this overtime promise. Our fire department's operations affect the lives and property of Yonkers residents.. Our firefighting personnel is placed in a position of possible danger every time they respond to an alarm. It is difficult to conceive how a department can react to emergency situations if the proportion of overtime must be calculated.

It may be said that whatever should be done at a fire, must be done regardless of overtime consideration. Such a conclusion is compelling. It could lead, however, to an imbalance of overtime so that catch-up overtime assignments would have to be scheduled when there is no need for extra assignments.

A guarantee of a percentage of overtime becomes involved with a guarantee of employment. New York City, which was also in financial difficulty laid off firefighters. Also the ratio of firefighters to officers per vehicle was changed. However, Yonkers was able to avoid an indefinite lay-off of firefighters. If lay-offs had become necessary for financial reasons, a possibility that was publicized in preparing the 1978/79 City Budget, this overtime guarantee would have been untenable just as guaranteed permanent employment is an untenable burden upon the City's funds.

The Award states at the top of Page 5:

"... the Arbitrators would readily concur with the City that it would be inappropriate to add such a restrictive clause to the agreement, especially in the current atmosphere of retrenchment and cost reduction."

and

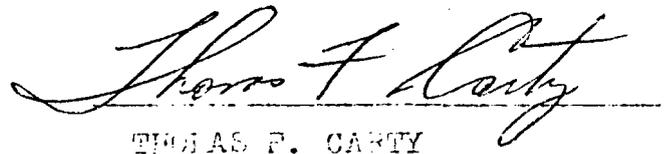
"... but it is not<sup>a</sup> desirable function of a third party simply to carve out a provision which one party no longer finds palatable".

In saying this, my fellow arbitrators seem to agree that the overtime ratio for firefighters is a restriction that has no place in the contract. The third party of our arbitration panel would not carve it out of the contract, however, because it should be bargained out.

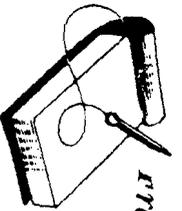
However, bargaining was done with when the parties chose to have this panel of arbitrators make decisions for them on those items on which they could not agree. It does not seem proper, therefore, to leave in the contract what admittedly the arbitrators would not put into the contract in the first place.

DAT B:

August 29, 1978

A handwritten signature in cursive script, reading "Thomas F. Carty", written over a horizontal line.

THOMAS F. CARTY



from the desk of

PROFESSOR SAMUEL GRAINZAND  
PH. D., CPA

~~CONFIDENTIAL~~

Leah Brown

Enclosed are two copies of  
Yonkers - PBR calculation  
Report.

You will notice this is  
a ~~renewable~~ Report. The  
emotional pressure here will  
likely be being exacerbated by  
political, economic and personal  
pressures.

Yonkers budget is subject  
to approval by the Emergency  
Financial Control Board but the  
Budget Committee were optimistic  
about the overall Report.

Warmest regards

Sam

**Dr. Samuel Ranhand****He takes the heat in PBA talks**By ERIC NADLER  
Staff Writer

Sam Ranhand knows he's on the hot seat. But the soft-spoken state arbitrator, who just finished taking testimony from Yonkers' embattled police union and entrenched city officials during hearings on a 1977-78 contract, says he doesn't mind the heat.

"Certainly being the neutral (party) on a three-person panel puts you in the spotlight with more responsibility," he said in a recent interview, "but I've been able to keep things moving and the party's talking to each other and that's my main task here."

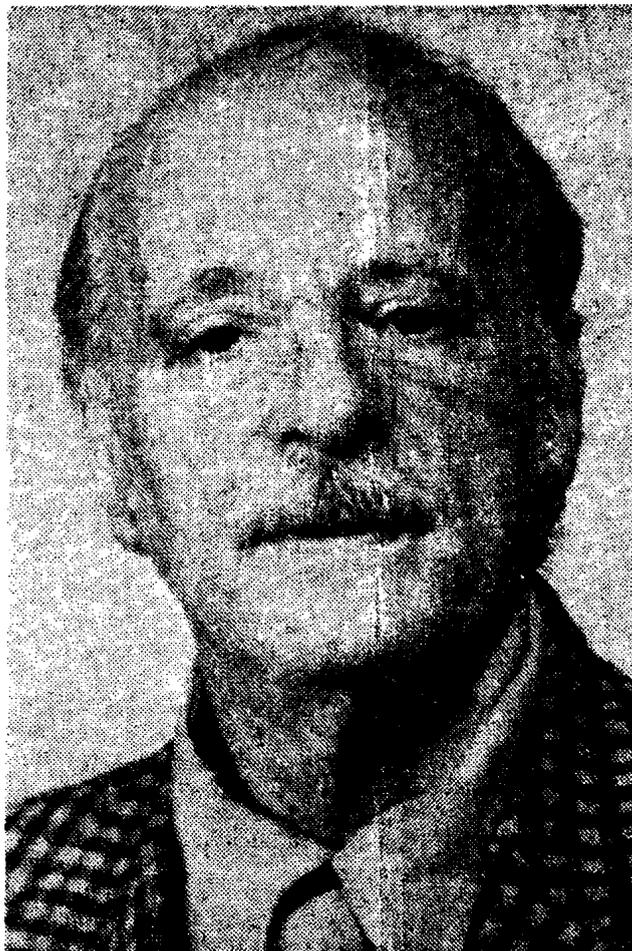
Dr. Ranhand was appointed by the state's Public Employee Relations Board (PERB) to the arbitration panel months ago. The panel includes a PBA representative and a city representative. After hearing testimony from both sides, the panel now will decide what to award the city's 480-man police force. The contract award is binding under the state's Taylor Law. All involved admit the situation is a powderkeg.

Among the empty coke bottles, discarded cigarette butts and crushed coffee cups after a recent arbitration session in a City Hall conference room, Dr. Ranhand poked candidly about what he termed the most "delicate" situation he has handled in more than 25 years of labor mediating.

"The considerable duration of negotiations (there have been 12 sessions to date) has caused tempers to flare from time to time," the City University professor said. The economic problems in Yonkers combine with political problems to make it a very difficult situation. There have been changes in the city government because of elections and new appointments recently. This has had a disrupting effect on the hearings."

"The City also realizes that what it does with one group of employees will have a definite impact on other multiple groups in the public sector here so they are betwixt."

Officers have not received a wage hike in more than a decade and were keenly disappointed with an arbitration award for 1975-76. The decision set starting salaries in Yonkers at \$11,900 and for five years...



**DR. RANHAND**  
... neutral party

erans at \$15,400 — comparable to other forces in Westchester and the rest of the state. Dissatisfaction with the package sparked the "blue flu" outbreak in which most of the...

Dr. Ranhand, sounding very much the conciliator, praised the PBA leadership for not suggesting or hinting they will condone a strike action. But he noted the situation is a complex one that has potential for confrontation and crisis. Dr. Ranhand said the dispute is part of larger picture nationwide in which city managers are getting tougher with public employees.

"The right to bargain collectively by public employees has existed for a relatively short time — about 10 years as compared to 40 years in the private sector," he said. "In the early years when the floodgates opened, employees quickly moved to remove what they perceived as inequities that had to be corrected."

"This was a new tool. There was a relatively inexperienced class of managers so that big gains were made by employees in wages, fringes, and administrative controls. Now the catch-up period is taking hold. Public employees have taken a step back compared to the early triumphs. Managers are trying to recapture what they gave up."

"Managers have realized that negotiations are a two-way street. They have introduced productivity bargaining (increased wages for more work) as a quid pro quo. There is much more sophistication on both sides of the table now."

Public employees seeking to restore the erosion of inflation are baning heads with city managers who say the money just isn't there, says Dr. Ranhand. "Then you have confrontation."

Dr. Ranhand holds a doctorate in labor relations from New York University and is a member of good standing of numerous arbitration and mediating societies including: The American Arbitration Association; Federal Mediator Conciliator Services, and New York and New Jersey State mediation boards.

He has mediated hundreds of cases in the public and private sectors for the last 25 years. While he has had numerous successes at various bargaining tables, he admits wistfully that he is not such a hot shot at the negotiating table at his Jackson Heights home. "I can never get a word in edgewise," he said. "My wife and children are much tougher than I am."

NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of the Compulsory Interest  
Arbitration

Between

CITY OF YONKERS

and

YONKERS FIREFIGHTERS, LOCAL 628 I.A.F.F.,  
AFL-CIO

INTERIM AWARD  
OF THE PUBLIC  
ARBITRATION  
PANEL

Case No. IA-24; M77-332  
-----x

The Public Arbitration Panel appointed by the State of New York Public Employment Relations Board has held hearings in the matter of Interest Arbitration between the City of Yonkers and Yonkers Firefighters, Local 628 I.A.F.F., AFL-CIO on March 23, 1978, April 18, 1978, April 19, 1978 and April 27, 1978. For reasons which will be explained in the Panel's Final Award, the Panel by unanimous vote finds that the following terms shall be included in a new Agreement between the parties to be effective from July 1, 1977 through June 30, 1978:

1. SALARY

Effective July 1, 1977, there shall be an increase across the board of one thousand six hundred fourteen dollars and ninety-eight cents (\$1,614.98) per annum for all firefighters

in the bargaining unit. This increase shall be applicable to each step on the present salary schedule with the exception that the starting salary shall be twelve thousand one hundred ninety-eight dollars and thirty-nine cents (\$12,198.39) and the present increment at the ninth month shall be eliminated.

Pursuant to above, the Salary Schedule for firefighters effective July 1, 1977 shall be:

Start	\$12,198.39
Upon completion of 1 year	\$15,900.87
Upon completion of 2 years	\$16,650.87
Upon completion of 3 years	\$17,400.87

## 2. NIGHT DIFFERENTIAL

Effective January 1, 1978, a Night Differential shall be paid at the rate of .0333 of the annual salary to be applied to regular straight-time rate of pay/ <sup>as shown in schedule in 1. above.</sup> The Night Differential shall be paid only to firefighters actually working the tour commencing 6:00 P.M. and ending 8:00 A.M. This differential shall be paid only for firefighters who work the full tour.

## 3. CLOTHING ALLOWANCE

Effective July 1, 1977 there shall be an increase in the Clothing Allowance of one hundred dollars (\$100) per year per man.

#### 4. PERSONAL LEAVE DAYS

The parties were at impasse on an item of the number of personal leave days for new employees. There was a desire on the part of the City to reduce the number of personal leave days for new employees as of January 1, 1978 from the present four (4) days in the Agreement to two (2) days. The Panel strongly urges and recommends that the parties continue to negotiate this item.

#### 5. CHECK-IN TIME

Each member shall be present at his assigned command for duty twelve (12) minutes prior to the commencement of his tour of duty for receipt of instruction, equipment and/or uniform inspection. Each member of the unit shall receive an additional five and one-half (5½) days' pay per year for this (two and three quarters days' pay for 1977), which said additional payment shall be earned as of the first day of each year. Payment shall be made on a semi-annual basis in January and July for the preceeding six-month period.

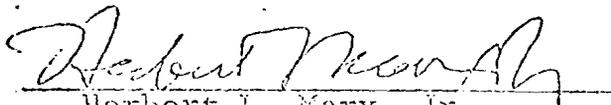
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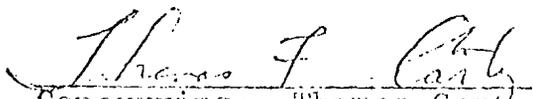
The Panel notes that, aside from the above items, there remain two (2) matters in contention between the parties. These are as follows:

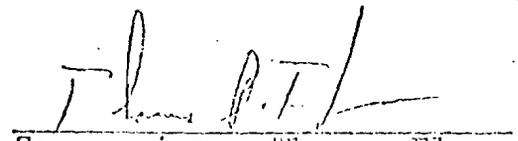
1. Proposed contribution by new employees to the City Health Insurance Plan.

2. Proposed deletion from the Agreement between the parties of provision for three-quarters of all overtime in the Fire Department. The parties shall be required to appear promptly before the Panel at a further hearing or hearings to present evidence and argument in these two (2) matters, after which the Panel will make findings thereon.

All items presented to the Public Arbitration Panel by both parties not included in the foregoing Interim Award, and except for the two (2) issues on which further hearings will be held, have been rejected by the Panel.

  
Herbert L. Marx, Jr.  
Chairman

  
Concurring: Thomas Carty  
Employer Panel Member

  
Concurring: Thomas Flynn  
Employee Organization  
Panel Member

Yonkers, New York  
April 27, 1978

Appellate Division  
Second Department

By Hopkins, J.P.; Mangano,  
Margett and Weinstein, JJ.

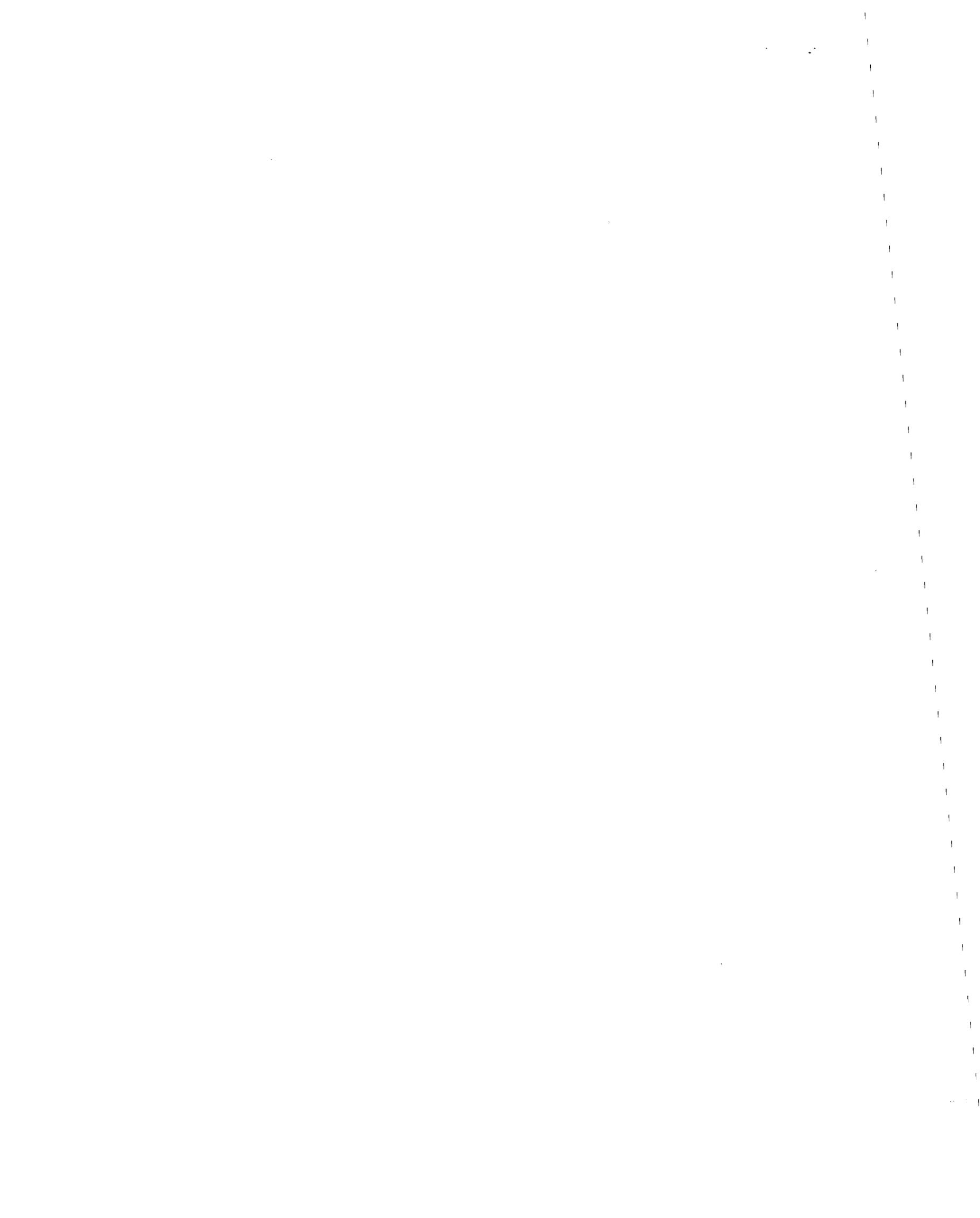
By Hopkins, J.P.; Mangano,  
Margett and Weinstein, JJ.

**CITY OF YONKERS, ap-res, v. MUTUAL AID ASSOCIATION OF THE PAID FIRE DPET. OF THE CITY OF YONKERS, res-ap**—In a proceeding pursuant to CPLR article 75, the parties cross-appeal from an order of the Supreme Court, Westchester County (Ferraro, J.), entered May 9, 1979, which, inter alia, denied petitioner The City of Yonkers' (City) motion to set aside a portion of the arbitration award and the union's cross motion to confirm the award.

Order modified, by deleting those provisions which denied the City's motion and the union's cross motion. As so modified, order affirmed, without costs or disbursements.

During the negotiations for a collective bargaining agreement between the parties, the City proposed that the provision of the previous contract, which related to "overtime distribution" be deleted due to the increased financial difficulties of the City. The parties were unable to agree on this issue, as well as a few other issues which were the subject of negotiation. An impasse was declared and a public arbitration panel was convened as provided for in subdivision 4 of section 209 of the Civil Service Law. An interim award was issued by the panel but two issues, including that of the "overtime distribution," remained the subject of dispute.

After hearings were held, the panel rendered its opinion and award, which included a change in the "overtime distribution" clause. Although, in its opinion, the panel specified the basis for its findings with respect to two of the factors noted in section 209 (subd 4, par [c], cl [v]) of the Civil Service Law, particularly in subclauses b and d, it failed to adequately specify the basis for its findings with respect to subclauses a and c. Since the statute required that this be done (see Civil Service Law, section 209, subd 4, par [c], cl [v]; memorandum by the Governor upon approving L 1977, ch 218, McKinney's Session Laws, 1977, p 2489), the matter was correctly remanded to the panel so that it could comply with the mandate of the statute. Once the panel has specified the basis for all its findings, Special Term will be able to properly decide the motion and cross motion before it.



811-7-2-4

State of New York Public Employment Relations Board

STATE PUBLIC EMPLOYMENT RELATIONS BOARD  
RECEIVED

MAR 29 1982

CONCILIATION

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In the Matter of Interest Arbitration :  
 Between : Before  
 CITY OF YONKERS : PUBLIC ARBITRATION PANEL  
 And : Herbert L. Marx, Jr.,  
 YONKERS FIRE FIGHTERS, LOCAL 628 : Public Panel Member and  
 INTERNATIONAL ASSOCIATION OF : Chairman  
 FIRE FIGHTERS, AFL-CIO : Thomas F. Carty  
 PERB Case Nos. IA-24; M77-332 : Employer Panel Member  
 ----- x Thomas F. Flynn  
 Employee Organization  
 Panel Member

March 9, 1982

APPEARANCES

For the City:

Irving T. Bergman, Esq.  
 Special Counsel for  
 Corporation Counsel

Alfred C. Cava  
 Labor Relations Specialist

For the Union:

Thomas F. De Soye, Esq.  
 Belson, Connolly & Belson

Thomas Tobiasen  
 President

O P I N I O N

On October 16, 1978 a three-person public arbitration panel (the "Panel"), whose names are signed below, issued a compulsory interest arbitration Opinion and Award in the matter of a collective bargaining agreement to be effective for one year commencing July 1, 1977 between the City of Yonkers (the "City") and the Yonkers Fire Fighters, Local 628, International Association of Fire Fighters, AFL-CIO (the "Union"). This proceeding was as directed by the New York State Public Employment Relations Board pursuant to Civil Service Law, Section 209.4, as amended July 1, 1977.

Following various court proceedings, the Appellate Division Second Department issued an Order on February 17, 1981, which reads in part as follows:

During the negotiations for a collective bargaining agreement between the parties, the City proposed that the provision of the previous contract, which related to "overtime distribution" be deleted due to the increased financial difficulties of the City. The parties were unable to agree on this issue, as well as a few other issues which were the subject of negotiation. An impasse was declared and a public arbitration panel was convened as provided for in subdivision 4 of section 209 of the Civil Service Law. An interim award was issued by the panel but two issues, including that of the "overtime distribution", remained the subject of dispute.

After hearings were held, the panel rendered its opinion and award, which included a change in the "overtime distribution" clause. Although, in its opinion, the panel specified the basis for its findings with respect to two of the factors noted in section 209 (subd 4, par /c/, cl /v/) of the Civil Service Law, particularly in subclauses b and d, it failed to adequately specify the basis for its findings with respect to subclauses a and c. Since the statute required that this be done (see Civil Service Law, § 209, subd 4, par /c/, cl /v/; memorandum by the Governor upon approving L 1977, ch 216, McKinney's Session Laws, 1977, p 2489), the matter was correctly remanded to the panel so that it could comply with the mandate of the statute. Once the panel has specified the basis for all its findings, Special Term will be able to properly decide the motion and cross motion before it.

The subclauses a, b, c, and d referred to above read as follows:

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.

Pursuant to the Order of the Appellate Division Second Department, the Panel conducted a hearing on November 5, 1981 at the Yonkers City Hall in which the City and the Union participated. The Panel invited the parties to provide further testimony, evidence or argument concerning the applicability of subclauses a and c to the "overtime distribution" issue in dispute. The record shows that counsel for the City stated as follows:

The City believes that the testimony that was adduced at the time that the arbitration proceeded initially addressed the issue of the deletion of three-quarter overtime provision from the then existing contract, and that the testimony that was produced by the City were directly on that subject. As that testimony may be evaluated in the light of the four standards, a., b., c., and d., as set forth in the statute that has been recited in the opening remarks of the Chairman of Panel, /such/ is to be determined by the Panel.

Counsel for the Union stated as follows:

I should say the Union has nothing to offer on the overtime distribution clause having heard the City's position.

The Panel reviewed these comments and also reviewed the testimony of the parties adduced at the hearings prior to its October 16, 1978 Opinion and Award.

As to subclause a, the Panel finds that the required "comparison" does not yield information as to similar "overtime distribution" provisions in situations for "other employees performing similar services . . .". As far as the Panel has

knowledge, the previously existing "overtime distribution" provision in the parties' collective bargaining agreement was established to meet the parties' mutual needs at the time of its inception. The Panel also carefully considered the City's arguments for requesting deletion of the clause in the proposed 1977-78 collective bargaining agreement as well as the Union's arguments for retaining the provision without change.

As to subclause c, the Panel finds upon full review that the "comparison for peculiarities in regard to other trades and professions" does not yield assistance in determining whether the Panel should find in favor of the City's position or the Union's position.

The Panel reiterates that it took into account the financial needs of the City in seeking to eliminate the "overtime distribution" clause and the Union's argument in favor of retaining the clause as a properly bargained condition of employment. The Chairman and Employee Organization Panel Member determined that the clause should be modified so that, in the view of the two Panel Members, the clause would be financially less burdensome to the City but would still be retained in revised form in line with the previously bargained mutual agreement of the parties. The Employer Panel Member dissented, noting in his dissent the reasons why the clause should be deleted.

Following all of the above, the position of the three members of the Panel remains unchanged, with the Chairman and the Employee Organization Panel Member finding, as a binding majority of the Panel, that the following shall continue to be Item 6 of the seven-part Award:

6. OVERTIME DISTRIBUTION

Article II, Section 3, third paragraph, of the December 17, 1973, Agreement between the parties shall be changed to read:

Overtime assignments shall be so distributed so that Fire Fighters shall receive an approximate proportion of overtime assignments consistent with the ratio of duty posts (other than staff positions) of Fire Officers and duty posts of Fire Fighters. This ratio shall be that existing each January 1 and July 1. Said assignments shall be reviewed on a periodic basis to see that the ratio is being maintained.

The Employer Panel Member continues to dissent, for the reasons stated in his original dissent to the October 16, 1978 Opinion and Award.

The Order of the Appellate Division Second Department gives the Panel no cause to review the other six portions of the Award.

A W A R D

On the basis of the Panel's findings with respect to subclauses a and c of section 209 (subd 4, par /c/, cl /v/) of the Civil Service Law, the Panel makes no change in its

Award of October 16, 1978 in respect to the "overtime distribution" clause of the parties' 1977-78 collective bargaining agreement.

DATED: March 9, 1982



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HERBERT L. MARX, JR.  
Public Panel Member and Chairman

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

On the 9th day of March, 1982, before me personally came and appeared Herbert L. Marx, Jr., 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.

*Also signed by 2 other panel members*