

REC'D 6/6/79
PERB. CONCILIATION

STATE OF NEW YORK PUBLIC
EMPLOYMENT RELATIONS BOARD
CASE NO. IA 58 M78-203

* * * * *	*	*
In the Matter of the Arbitration Between the	*	<u>STATEMENT OF</u>
CITY OF NEWBURGH	*	<u>CHAIRMAN OF</u>
and	*	<u>PUBLIC</u>
THE INTERNATIONAL ASSOCIATION OF	*	<u>ARBITRATION</u>
FIRE FIGHTERS, LOCAL 589	*	<u>PANEL</u>
* * * * *	*	*

Pursuant to the provisions of the Civil Service Law, Section 209.4, Harold Newman, Chairman of the Public Employment Relations Board designated the following individuals on October 23, 1978 to serve as a Public Arbitration Panel in this proceeding:

- Thomas F. Carey, Public Panel Member and Chairman
- John Desmond, Employer Panel Member
- Celestine Kelly, Employee Organization Panel Member

The Panel was charged by Section 209.4 to heed the following statutory guidelines:

- (v) the public arbitration panel shall make a just and reasonable determination of the matters in dispute. In arriving at such determination, the panel shall specify the basis for its findings, taking into consideration, in addition to any other relevant factors, the following:
 - 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.

The Panel conducted its hearings in Newburgh, New York in November and December of 1978. The Employer and Employee Organization were present and they were afforded full opportunity during these hearings to present evidence and argument in support of their respective contentions.

The Public Arbitration Panel accepted the stipulation of the Parties that their two (2) Joint, twenty-nine (29) Association and sixteen (16) City submissions would, along with the post hearing briefs, represent the entire official record of the instant proceedings.

After the closing of the hearing, and the receipt of the briefs in January, the Panel met in executive sessions and deliberated on the open issues, which were presented to it in the Petition for Compulsory Interest Arbitration filed by the Employee Organization. The results of these deliberations are contained in the Award issued by the Panel on April 23, 1979. The Panel was unanimous in all conclusions on five (5) key issues it was charged to arbitrate. All other issues were deferred for future negotiations. Mr. Desmond, the Employer Panel Member, Mr. Kelly, the Employee Panel Member, and the Chairman were able, after considerable discussion and review

at several extended meetings of the Panel to unanimously agree on all open issues. The Chairman would like to commend both of the gentlemen for the insight and diligence they brought to the task.

The Panel took into consideration the fact that evidence and argument with respect to all the items involved in the proceedings had been presented at the hearings and made recommendations based upon such evidence and argument.

BACKGROUND

The bargaining unit consists of fifty-nine (59) members. The International Association of Firefighters, Local 589, herein-after called the Union, represents the ~~Deputy~~ Deputy Chief, five (5) Assistant Chiefs, four (4) Captains, nine (9) Lieutenants and forty (40) Fire Fighters. Several positions are currently "vacant" and five (5) Fire Fighters are on disability leave.

GENERAL PROCEDURES

1) All requests for economic improvement were evaluated in accordance with the testimony, argument and data submitted, and weight was given, in addition to other criteria, to salaries, benefits and contract settlements in comparable communities; salary improvement for other City employees; changes in the Cost of Living, the financial position of the City and the like.

2) In those impasse issues, where one Party requested a change in wording of a previously negotiated and accepted non-economic contract provision in the existing contract and the opposing Party insisted on the status quo, the Panel, in addition to other criteria, has sought to determine from the evidence submitted the extent to

which: (a) the Party requesting the change has been harmed by the inclusion of that provision in the contract, or (b) the Party resisting the change has been abusive of the privileges afforded to it by said clause.

3) In those impasse issues, where one Party requested the inclusion of a new contract provision and the other Party opposed it, the Panel, in addition to other criteria, has sought to determine from the evidence submitted the extent to which: (a) the Party requesting the inclusion has been handicapped by its omission, or (b) how the Party resisting would be harmed by its inclusion.

The Panel spent extensive time exploring and testing a wide range of alternatives in an effort to identify a two (2) year viable settlement with mutually acceptable terms and conditions.

Based upon the various factors which Section 209.4 charged the Panel to consider, it is my opinion that the Award of the Panel was fair, equitable and warranted by the evidence presented at the arbitration hearings.



THOMAS CAREY
Public Panel Member
and Chairman

DATED: April 26, 1979

STATE OF NEW YORK

PUBLIC EMPLOYMENT RELATIONS BOARD

CASE NO. I 58 178-203

* * * * *

In the Matter of Impasse Between

CITY OF NEWBURGH, NEW YORK

and

THE INTERNATIONAL ASSOCIATION OF
FIRE FIGHTERS, LOCAL 589

* * * * *

AWARD OF

PUBLIC

ARBITRATION

PANEL

ARBITRATION PANEL

THOMAS F. CAREY, Chairman, Public Panel Member

JOHN DESMOND, Employer Panel Member

CELESTINE KELLY, Employee Panel Member
(International Association of Fire Fighters)

APPEARANCES

CITY

JOHN DONOGHUE, ESQUIRE	Counsel
HON. GEORGE SHAW	Mayor, City of Newburgh
HARRY PATEL	City Comptroller
JOSEPH LAGROTTO	Fire Chief

LOCAL 589, INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS

JOSEPH FONES	Counsel
ARTHUR WILCOX	President
DENNIS CARPENTER	Vice President
TOM SCALZO	Treasurer
ALLEN RUGGERIO	Trustee

The undersigned Arbitrators, having been designated pursuant to the provisions of Section 209.4 of the New York State Civil Service Law, and having duly heard the proofs and allegations of the Parties, hereby make the following

A W A R D

The terms and conditions of employment specified as "not agreed upon" in the petition for Compulsory Interest Arbitration filed by the Association are decided as follows:

POSITIONS AND ARGUMENTS OF THE PARTIES

I. Positions of the Union

Introduction

The City of Newburgh and Local 589, I.A.F.F., AFL-CIO, reached an impasse during collective bargaining for a contract for the calendar year 1979 on twenty-six issues raised by the Union's proposals. The City's counterproposals as presented during the interest arbitration hearings was essentially maintenance of existing contract provisions.

The Union's demands fall generally into three categories: (1) impact of the City's unilateral reduction of manpower generally and rig manning specifically; (2) raise in pay and benefits merely to keep pace with the cost of living; (3) administrative matters.

The following is a brief summary of some of the evidence introduced during the interest arbitration hearings, reasonable inferences to be drawn from the evidence and argument.

Impact of City's Manpower Decisions

It is a fundamental concept of labor management negotiations that management, with its high degree of control over operations, is responsible to provide reasonably safe working conditions. In Newburgh, manpower available to respond to alarms has been reduced below prudent minimum levels for safe operation. Since 1976 when minimum shift levels were removed from the collective bargaining agreement, experience has shown that lower manning levels have had a severe impact on each Fire Fighter.

The Union makes four (4) demands to redress the impact of the City's unilateral manning decisions. They are proposed Article 5, setting the hours of duty, Article 10, establishing time and half pay for non-emergency overtime, Article 21, providing for hazardous duty

pay and Article 24, providing for a more effective safety committee. The Union asks that the safety committee be revamped into a newly created general Health and Safety Committee with equal representation and decisions made by majority vote. Regular meetings are mandated and a procedure for calling special meetings is provided. The expeditious resolution of deadlocks is achieved by arbitration like other employee grievances.

The next matter in dispute directly related to the impact of manning decisions is the need to establish time and a half pay for overtime for causes other than conflagration or similar emergency. The major contributing cause of overtime at present is the City's decision to cut its level of manpower from the average of 78 men from 1968 through 1974 to 58 men in 1978. The City attempts to unilaterally change the working conditions of the men without agreeing to any additional consideration for the impact. While cuts can be made in the force, the impact on those remaining cannot be ignored by the City.

In order to provide a basis for computing overtime, and to give some degree of normalcy and predictability to the life of a Fire Fighter, shifts are proposed to change at 8:00 a.m. and 5:00 p.m.

The last issue directly related to the impact of the City's unilateral decisions regarding manning levels is the demand for Hazardous Duty Pay. The Union has shown through the testimony and exhibits presented that when manpower available to respond at the first alarm reaches a level of below four men per apparatus that the risks that Fire Fighters are exposed to is materially increased. In Newburgh, there is a striking correlation between reduced levels of manpower and increased injury. That these injury levels are

substantially in excess of state and national experience shows that this impact is far beyond the usual hazards of the occupation. Historically, jobs involving increased risks to employees are paid a premium rate of pay.

The computation of premium pay contained in Article 21 is both fair and reasonable based upon the demonstrated impact of reduced manning levels disclosed by the exhibits.

Pay to Keep Pace With Cost of Living

Beyond demands related to the impact of the exercise of management prerogative, the Union is not really seeking a pay raise. Certainly, a municipality which is at the virtual limit of constitutional property taxing authority can't be expected to provide much in the way of increased real wages. However, the Newburgh Fire Fighters have just barely kept pace with the cost of living in the past ten years. In real terms, they haven't had a pay raise in a decade. While Newburgh is not a model of prosperity, the evidence does not justify a decrease in real wages for the men of the City of Newburgh Fire Department. There is no issue as to productivity. In fact, it must be conceded that the men are required to do more with less. That is, over recent years, while manpower has been falling alarms and injuries have been dramatically increasing. Admittedly conservative estimates of the rate of inflation for 1978 are at least eight per cent (8%).

In addition to a CPI maintenance of salaries, longevity payments must also be adjusted to at least keep pace with the cost of living. The demand is not extravagant. A review of PERB's first and second report of salaries for firefighting personnel of the paid fire departments in New York State submitted in evidence by the City shows that

out of sixty (60) units, forty (40) have longevity payments substantially higher than Newburgh's. A twenty-five dollar (\$25.00) increase in longevity hardly brings Newburgh into the ranges obtained in many jurisdictions throughout the region and State.

Does the City have the ability to pay for even such a modest increase in salary? Indeed, the passage of a one percent (1%) sales tax would yield at least an additional three hundred thousand dollars (\$300,000.00) in revenue after accounting for the absorption of the consumer utility tax.

The projection of uncollected taxes in the amount of \$147,346.00 computes to a collection rate 95.22% up significantly from the rate of 91.7% of 12/31/77. Such an increase in collection may well be indicative that the appropriations for uncollected taxes of \$475,290.00 contain more than a modest surplus. Related to this issue, the City Comptroller has testified that the 1978 appropriation is for all taxes current and prior. That is incorrect. It is an appropriation for current only.

The City has established reserves for all prior taxes and they are most adequate:

Source: City #9

<u>Total Real Property Tax Receivables</u> 12-31-77	<u>Reserves for Uncollected Taxes</u>
Line A 331	Line 710
\$ 2,553,733.35	711
	\$ 2,293,326.88

The reserves constitute 90% of all outstanding taxes and have been established through prior years appropriations for uncollected taxes. That they are sufficient is indicated by revenues reported as unneeded reserves for taxes reported in the Annual Reports line

1050 - Schedule A3:

1975	\$ 136,879.00	
1976	\$ 119,860.00	
1977	\$ 132,400.00	
1978	\$ 150,000.00	(Estimate (1978 Budget))
1979	\$ 135,000.00	(Estimate (1979 Budget))

As has been stated by Mayor George Shaw at the public hearings regarding the 1979 budget, acknowledged on his cross examination, while not shown by line item, the City has the money for public safety employees pay raises. It is in this spirit that the Fire Fighters demand to merely keep pace with the cost of living in their wage and longevity proposals.

Administrative Matters

Due to changes in administrative procedures, court decisions and other circumstances over the course of the current collective bargaining agreement, certain administrative provisions of the contract should be changed or added.

The first of these are changes to the grievance procedure to clarify language and provide for arbitrators who are no longer available. At the final day of the hearings, Article 22, formerly in dispute, was agreed upon so that original contract language applies for the changes indicated in steps 1, 2 and 3 and the change in arbitrators.

The proposal for job description duties contained in proposed Article 7C is required to clarify the non-firefighting functions of the men and fix a date to determine current practice so that any changes made by the City can unambiguously be made the subject of negotiations. Changes in the 207-a law permitting light duty assignments to partially disabled Fire Fighters lead the Union to believe that the added job description language is needed to avoid hairsplitting

litigation over what are or aren't within a Fire Fighters job description.

The Union's proposal to put standard operating procedures in writing (Article 7F) also seeks to avoid grievances, litigation or misunderstanding as to just what is expected of the men. Only those orders which are to become standard operating procedures are to be reduced to writing. This creates no unreasonable burden on management, and assures equal treatment for all members of the department.

In view of the 1977 legislative amendments to General Municipal Law 207-a, a procedure must be established for the resolution of disputes as to disability, degree of disability and nature of light duty to be assigned, if any. The new statute is silent as to the procedures for making light duty assignments. In one case which has arisen during 1978, it was necessary for the courts to direct a fair hearing on these issues in the Newburgh Fire Department. The Union's demand represents an orderly, fair and decisive determination of 207-a issues.

The provision for a clothing allowance has been changed by proposed Article 16H so that in addition to promotion, demotion will also result in a clothing allowance for the cost of the change in issue. This addition was necessitated by recent trends toward reorganization exercised as a management prerogative which impacts the men by requiring changes in uniform issued.

Article 17B and 17C contain proposals reducing the time of years of service for vacation time. The current language granting increased vacation time after twenty (20) years of service is basically meaningless to most of the membership, since they have to reach retirement age before being eligible for the extra week's vacation.

Article 23A and 23C as proposed to increase association release time by five days for the Local's President or his designee, and is in keeping with the increased complexity of his functions as employee representative. Certainly members of the grievance and safety committee must be granted association release time in order to fulfill their responsibilities.

Article 31 of the contract proposals is a clause establishing working conditions not specifically mentioned in the bargaining agreement as prevailing rights. Inclusion of such a clause in a new contract is essential to insure that there is no misunderstanding about the requirement to negotiate the impact of management prerogatives. The clause would serve to require continuing dialogue between management and the Union concerning any changes in working conditions so as to improve the quality of labor management relations.

Article~~33~~³⁴ establishing an agency shop (and the changes proposed by Article~~33~~³³ regarding dues check-off to coincide with the new agency shop provisions) is necessary to provide Local 589 with the ability to effectively represent the men of the Fire Department. Due to increased complexity of labor-management relations, the expense of counsel and other expenses of administration, agency shop is needed to support the work of the Local.

Article 35 of the contract proposals calls for up to \$3,000.00 funeral benefit for men killed in the line of duty needed to insure a proper funeral to men who give their life in the service of the City.

Article 36 of the proposals is necessary to insure that only firefighting functions will be performed by the men of the department. This clause is needed to protect the men from becoming involved with

disputes with the other public employee unions. Further, the clause would further insure that negotiation would be required before management could impose additional duties upon the men in the Department.

Article 37 of the proposals calls for a contract reopener in the event of a significantly higher monetary difference negotiated by another bargaining unit. This type of provision would assure that the firefighters maintain just and reasonable compensation relative to other employees of the City.

Article 40 of the proposals sets an 18 month term for the contract. Such a term would allow time for the City to prepare its budgets with possible salary increases in mind. The present system encourages the City to adopt unrealistic budgets which do not fully account for anticipated expenses.

The Article also calls for "a contract hiatus clause to maintain the status quo. Such provision is necessary to give the firefighters some measure of protection against the management ploy of failing to negotiate a contract. The question of the obligation to maintain status quo during contract hiatus is unclear as reflected by recent decisions. Such a provision would help prevent breakdown in labor management relations during contract hiatus."

II. Positions of the City

Salaries and Economic Benefits

The greatest single issue facing Newburgh today is the imminence of economic collapse. Newburgh suffers at the leading edge of the declining cities. It bargains with its unions from a position of deepening decline and in terms of the possibility of economic disaster. It bargains in a climate in which raises have meant cuts in personnel and services. It bargains against the backdrop of a half-million dollar deficit and another quarter-million in uncollected taxes. Fully ten percent of Newburgh's budget is jeopardized by uncollectable taxes which reflects an inability to raise money to meet its current and existing expenses. Testimony on the true disaster existing in the community remained unrefuted at the Arbitration hearing.

Union Exhibit 12 in evidence, which proports to be a geographically comparable analysis of salaries and manpower, is also telling. Union Exhibit 12 lists Peekskill, an affluent northern Westchester suburb and two of the richest communities in Dutchess as comparable areas for Newburgh. The average salary paid to firefighters represented in Union Exhibit 12 is \$13,731.00, a mere \$333.00 over Newburgh's, and that figure is buoyed by the healthy status of very wealthy communities. Kingston, a neighboring city, and Middletown, another neighboring city, have salaries well below those currently paid in Newburgh.

City Exhibit 11 in evidence is a five year study of the City of Newburgh's manpower, business condition, tax collections, and in rem status.

Exhibit 1 in City's Exhibit 11 in evidence shows the decline

of the size of the uniformed forces in Newburgh since 1974. That decline dramatically parallels the reverses in the City budget over the past five years. Newburgh, which was once able to support 78 firefighters, is now reduced to an authorized strength of 63. That loss has been sustained by the steadily accelerating decline in the status of Newburgh's community. With the loss of Central Hudson, major portions of Stauffer Chemical, TelePrompter and other business enterprises, Newburgh's ability to support services has radically gone awry. "No amount of magic or collective bargaining can generate money from a tax basis as dismal and foreboding as that of Newburgh."

Exhibit 3 to City's Exhibit 11 in evidence dramatically shows the City's plight. The City's budget five years ago provided for a tax levy of \$2,774,759.96. In a five year period, taxing at the maximum levels permitted under the Constitution, the City has raised its taxes to \$3,104,136.67, a mere 10.5% jump. The cost of living within that same time period has gone up more than 30%. Even more dramatically the figures reflect that Newburgh's ability to collect its taxes in 1973 was not awe inspiring. It was successful in collecting 93.3% of its tax levy. Currently, it can only collect 89.7% of its tax levy. "As taxes go up, the ability of Newburgh's tax payers to pay goes down. The ratio and relationship between the two is inescapable. Newburgh has gone to the well once too often."

In a small section of the City, a total of 222 buildings are vacant or abandoned. Those buildings are, of course, off the tax role and fail to yield any ~~achievable~~ gains to the City in support of its services. In addition, Newburgh continues to meet poverty standards for Federal Funds at a level which only serves to emphasize "but not improve its dire straits."

City Exhibit 12 in evidence contains five categories that demonstrate the devastating effect of declining tax roles for this City.

One can see from City Exhibit 12 in evidence the City of Newburgh entered the 1973 fiscal year with a fund balance surplus of \$393,840.00. That balance slipped to a \$43,459.00 surplus in 1974 and fell to a \$394,000.00 deficit in 1975. In 1976 the deficit increased to \$360,280.00, but by 1977 was reduced to \$234,509.00. It seemed for the moment that the City was beginning to put its fiscal condition back in order. Today, however, on the direct and unrefuted testimony of the Comptroller, the gain of the past year has been erased and Newburgh will complete the 1978 fiscal year with a deficit of \$505,835.00, "hardly the type of fiscal shape from which raises of any type should be anticipated."

The City will expend \$166,816.00 more in 1978 than it appropriated. The Fire Department alone accounts for \$37,179.00 of that amount. That figure is exclusive of increased employee benefits, some of which are attributable to the Fire Department.

City Exhibit 13 in evidence, which is a survey of salaries for firefighting personnel from March 1978, shows dramatically the advantage which Newburgh's fire fighters have over those of many other municipalities. Some cities pay substantially below \$10,000.00 to entry level fire fighters and advertise maximums substantially below those achievable in Newburgh. Glens Falls, Batavia, and even nearby Kingston show salary scales which have not yet achieved the levels that have been afforded to Newburgh's fire fighters "despite the desperate straits in which the City finds itself."

The October 1978 survey (City Exhibit 14 in evidence) shows PERB analyses of the trend of settled contracts. The PERB survey

continues to show Newburgh favorably. Nearby Beacon has entry level for January 1979 of \$11,156.00 and a maximum of \$12,281.00, far below Newburgh's current pay scale, even if Newburgh's salaries were to remain frozen. Other cities within that list show salaries substantially under those paid by "impoverished Newburgh."

City Exhibit 15 in evidence is a comparison of the fringe benefits afforded to firefighters throughout the state as compiled by PERB in June of 1978. Without reference to Newburgh's 51% fringe benefit cost for firefighters for retirement and other contractual benefits such as health insurance, the document shows "some remarkable advantages for employment in Newburgh." In Beacon there are 13 holidays and a maximum of 12 sick leave days per year. Firefighters do not receive time and a half for overtime, but rather are paid straight time and receive a uniform allowance of \$135.00. Poughkeepsie, on the other hand, despite its wealth, maintains only 12 holidays and grants vacations not to exceed 18 working days after 5 years of employment. Sick time granted in the City of Poughkeepsie is limited to 12 days per year. Similarly, Middletown is behind Newburgh. It provides for no more than 11 holidays, no more than 96 hours of sick leave per year, and a uniform allowance which does not exceed \$100.00. Clearly, "Newburgh grants either comparable or better fringe benefits than most surrounding municipalities."

Job Description

The current collective bargaining agreement provides for a contract clause which excuses members of the unit from performing major maintenance in certain defined categories. During the course of collective bargaining the City proposed a definition of major maintenance but was unable to reach an agreement with the IAFF on

the amended clause. The City offered to withdraw its change but that offer was rejected by the firefighters. The City now proposes that the current clause remain unchanged. The language initially proposed belonged to the City and it should be unrestricted in its ability to withdraw contract proposals.

Verbal Orders

The firefighters have proposed a severe proposal which states that any oral statement to firefighters is unenforceable unless it is in writing. The City repeatedly said that it has no objection to the codification of standing departmental regulations. The clause invites insubordination and mismanagement.

Filling of Positions

The firefighters have proposed that all vacancies be filled immediately during the term of the contract. The proposal "is a flat out no lay off proposal." The City has never agreed to bargain this nonmandatory subject and does not agree to now.

Separation Pay

The firefighters have proposed that any firefighter who is laid off, resigns or is removed from the department for other than a "legally" justifiable reason would be entitled to receive unused sick leave and "all accumulated days". The firefighters have never defined what the second category of "all accumulated days" means as proposed for Article 9, paragraph 8. The clause stands for the proposition that a newly hired firefighter who has worked for five days for the City could get fifteen days severance on a layoff.

Overtime Pay

Under the guise of an overtime pay provision, the firefighters have proposed that they be relieved of the obligation to report to

work except for a second alarm civil disorder or "other similar emergency". During the course of bargaining the City attempted to define "other similar emergency" in a way which would allow for the refusal of overtime for all circumstances "beyond the control of the City." That definition of "other similar emergency" was refused and the City's counterproposal was never responded to in any way.

With regard to the time and one-half pay proposal, the issue is exclusively one of the economic package. The City currently budgets approximately \$60,000.00 for overtime. The additional \$30,000.00 would come from whatever limited funds the City would have for a total package and settlement.

Educational Benefits

The City has proposed that the educational benefit provision be amended to provide for firefighting courses only. There are currently members of the unit that are taking advantage of the educational benefits provision to prepare for new professions. The clause was never intended to allow that type of abuse. It should be amended to limit course reimbursement for firefighters who take fire science and provide for reimbursement to the City for members who abuse the clause by changing direction once a program has been commenced.

207A

Article 15, 207A as proposed by the firefighters "contains an economic time bomb. It is a demand for continued pay during a period of self-imposed idleness." During the course of negotiations the City had indicated to the firefighters that it was unwilling to waive the right to recall firefighters to perform light duty where they had medically been determined by the City's physician as being capable of performing light duty work. The City had proposed that if the IAFF

were willing to waive payment during the period of challenge it was willing to accept a change, but without that waiver, it should not be obligated both to surrender its right to the use of the employees' time and remain obligated for full pay. Under the clause as proposed, the medical opinion of a lay firefighter would be given the same weight as a medical certification. The clause and its changes should be rejected.

Clothing Allowance

The IAFF has proposed that the clothing allowance be raised to \$175.00 for each and every change of rank. Under the proposal, should an employee accept a promotion and after two weeks decide to return to the unit, he would receive \$175.00 for the promotion and \$175.00 for the return to the unit. The cost implications are obvious. The clause should be rejected.

Vacation

The firefighters have proposed that the vacation schedule should be altered to advance the time in which vacations are paid and provide for an additional week's vacation at the conclusion of fifteen years of service. "The clause is a simple cost drain. In order to implement the vacation proposal the City would either have to hire additional personnel or provide for additional overtime. It should not be granted in a period of severe austerity such as Newburgh is currently experiencing."

Sick Leave

At Article 21, subdivision B7, the IAFF has proposed that no employee be required to present a medical certificate for less than 72 hours of illness. "That would apply, the IAFF advises us, whether or not the individual had infectious hepatitis or any other contagious

illness. The City would be obligated to pay for medical attention in order to receive a written statement. The Union's demand means it expects the City to pay for ongoing medical expenses on top of health insurance in any prolonged illness. The demand should be rejected."

Hazardous Duty Pay

The hazardous duty pay clause as proposed by the firefighters is currently pending on appeal before the Appellate Division of the State Supreme Court. "The issues in the clause are simply not mandatory subjects for bargaining and read together with the safety proposal in Article 24 stand for little more than the time worn minimum manpower provisions previously ruled by PERB to be non-mandatory subjects to bargaining."

Grievance Procedure

The sole issue between the parties concerning the grievance procedure was a provision which would provide for the arbitrability of any term, condition, event, or condition affecting a term of condition of employment. The clause was withdrawn and the Article now stands as settled.

Association Release Time

The IAFF seeks to have the City of Newburgh contribute to its welfare by providing for the ongoing payment of additional time off for its president to attend to union business. "The clause merely seeks to expand the City's contribution to the Union. There is no rationale to support it and no rationale to support the contention that the City is obligated to compensate Union officers for the privilege of litigating against it."

Safety Committee

The City brought an improper practice charge against the IAFF, alleging, among other things, that the so-called safety demands in Article 24 constituted a non-mandatory subject of bargaining. PERB found otherwise.

The City has appealed the ruling of PERB. Article 24, if implemented, would give a Safety Committee jurisdiction over "the total number of employees reporting to a fire and the minimum number of employees assigned to each piece of firefighting apparatus." In other words, the Safety Committee demanded in Article 24 would have jurisdiction over rig-manning.

Clearly, the demand for a Safety Committee in Article 24 is a non-mandatory subject of bargaining. "The IAFF is attempting to force the City to address and negotiate the issue of rig-manning under the guise of its demand for a Safety Committee. This subterfuge has been expressly disapproved by the Appellate Division, Second Department in Matter of the City of New Rochelle v. Crowley, 61 A.D.2d 1031, in which the court noted that a union is forbidden from forcing management "to negotiate general questions of manpower under the guise of safety." (City of New Rochelle v. Crowley, supra, at 1032.)"

Prevailing Rights

The firefighters have "deftly attempted to change the prevailing rights clause by removing from it the language that makes it subject to the management rights clause. They then deftly ignored the existence of the clause in the current collective bargaining agreement and failed to submit it to this arbitrator. There is no showing that the management rights clause has created any harm." It was entered into the contract during the last round of bargaining. It should not be

withdrawn with no opportunity on the part of the City to test its effectiveness.

Agency Shop

The City has resisted the imposition of an agency shop provision because it views it as part of a quid pro quo and a prelude to a voluntarily achieved agreement. The City should not be compelled to adopt an agency shop provision through the force of an arbitration award when it has been precluded from bargaining a fair settlement.

Funeral Expenses

The IAFF has proposed a \$3,000.00 per employee expense. The clause remains part of the economic package.

Union Work

Article 36 as proposed is an expansion on job description which had previously been agreed to. If the IAFF is given the limited job description clause that it proposes at Article 7C, then this clause is totally unnecessary.

Parking

The IAFF has proposed that the City, "through some mysterious force, create a parking facility. The proposal would require the condemnation of property or the establishment of statutory exemptions, unenforceable in nature, to allow for parking facilities for members of the unit."

Lay-offs and Demotions Other Than For Cause

The IAFF has proposed a clause which would prohibit the City from denying promotions or leaving vacancies unfilled. It would also propose that no firefighter may "be reduced in rank" because of budgetary reasons. "Article 38 as proposed is nothing more than a no layoff provision. It is beyond the power of the Panel to change the current

statutory enactments."

Most Favored Nations Clause

The IAFF has proposed that should another unit get more than they get, the contract reopens. "The clause is simply a refusal to bargain." What the IAFF has said is that they are willing to stand on the quality of the CSEA or the PBA agreements. The City counter-proposed that should any contract be executed which provided for lower benefits, the IAFF's contract would be automatically reduced. The IAFF rejected that proposal.

AWARD OF THE PANEL1) Duration and Retroactivity

It is DETERMINED that all terms of the contract between the Parties which expired December 31, 1978 shall be extended for a two (2) year period. It shall commence on January 1, 1979 and expire December 31, 1980. It shall be unchanged except as modified by this Award.

2) Wages

a. Effective January 1, 1979, the salary schedule shall be increased by 3.5% on each step.

b. Effective July 1, 1979, the salary schedule shall be increased by 3.5% on each step.

c. Effective January 1, 1980, the salary schedule shall be increased by 3.5% on each step.

d. Effective July 1, 1980, the salary schedule shall be increased by 3.0% on each step.

3) Longevity

Effective January 1, 1979, longevity shall be :

a. After 10 years of service \$ 200.00

b. After 15 years of service \$ 500.00

4) Overtime

Effective January 1, 1980, overtime shall be paid in cash at the rate of time and a half. If the employee opts for "comp time", it shall be at the straight time rate.

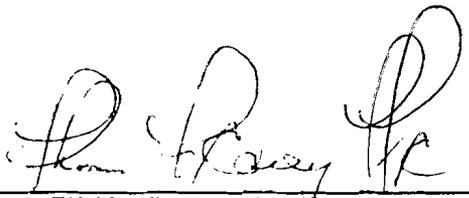
5) Vacations

Effective January 1, 1980, vacations shall be granted as follows:

- a. After 1 year - 21 consecutive days
- b. After 7 years - 28 consecutive days
- c. After 15 years - 35 consecutive days

6) Agency Shop

The City agrees to include an appropriate agency shop clause and the Union agrees to include a save harmless clause, effective July 1, 1979



THOMAS F. CAREY

Public Member and Chairman



JOHN J. DESMOND

Employer Member

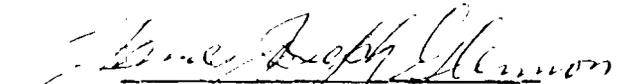


CELESTINE KELLY

Employee Member

STATE OF NEW YORK)
COUNTY OF NASSAU)

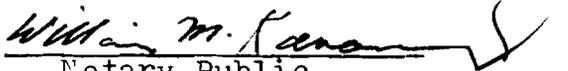
On this 1st day of May 1979 before me personally came and appeared THOMAS F. CAREY, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.


Notary Public

JAMES JOSEPH GLENNON
NOTARY PUBLIC, State of New York
No. 30-6543135
Qualified in Nassau County
Commission Expires March 30, 1980

STATE OF NEW YORK
COUNTY OF

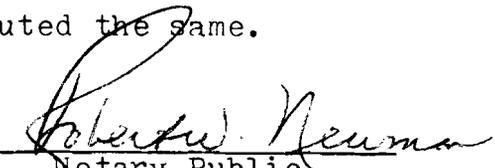
On this 11th day of May 1979 before me personally came and appeared JOHN DESMOND, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.


Notary Public

WILLIAM M. KAVANAUGH
Notary Public, State of New York
Qualified in Nassau County
My Commission Expires March 29, 1981

STATE OF NEW YORK
COUNTY OF

On this 18th day of May 1979 before me personally came and appeared CELESTINE KELLY, 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.


Notary Public

DATED: May 1979

RECEIVED

JUN 16 1980

CONFIDENTIAL

STATE OF NEW YORK PUBLIC
EMPLOYMENT RELATIONS BOARD

CASE NO. IA 58 M78-203

In the Matter of the Arbitration between the
CITY OF NEWBURGH
and
THE INTERNATIONAL ASSOCIATION OF
FIRE FIGHTERS, LOCAL 589

STATEMENT OF
CHAIRMAN OF
PUBLIC
ARBITRATION
PANEL

Pursuant to the provisions of a Stipulation entered into by the Parties (Supreme Court of the State of New York-County of Orange, Index #1229/80), the Interest Arbitration Panel in the instant dispute was reconvened on May 16, 1980.

The "Stipulation" specified,

It is hereby stipulated and agreed by and between the attorneys and the parties to the above entitled Article 78 Proceeding and underlying grievance, that the said proceedings are hereby settled and discontinued and an order to that effect may be entered by either party based upon this stipulation without further notice to the other, and it is further stipulated that:

- (1) The parties hereby agree to the reconvening of the arbitration panel that rendered the interest arbitration award between them pursuant to Section 209.4 of the Civil Service Law on or about May 5, 1979. This was Public Employment Relations Board Case No. IA 58 M78-203.
- (2) The parties agree that the interest arbitration award does not abrogate the terms and conditions which were signed off and

the grievance arbitration procedure agreed upon during the interest arbitration process.

- (3) The only purpose of the meeting of the reconvened panel is to interpret the meaning of a provision of its arbitration award which reads as follows:

"(4) Overtime. Effective January 1, 1980 overtime shall be paid in cash at the rate of time and a half. If the employee opts for 'comp time', it shall be at the straight time rate.

- (4) The panel's authority is restricted to interpreting the above quoted award language.

The City's position is that overtime shall be paid for extra tours at time and a half of the "tour" rate which is time and a half of 1/5th of a member's weekly salary whether the member works a 15 hour or 9 hour extra tour.

The Union's position is that overtime shall be paid for extra tours at time and a half based on 1/40th of a member's weekly salary for each hour worked.

- (5) It is not the intent of the parties that any other questions be submitted to the arbitration panel, particularly as to what does and what does not constitute overtime work. We only want an opinion as to how a man is paid once it is determined that he has worked overtime.
- (6) Thomas F. Carey shall reconvene the interest arbitration panel solely for the purposes of interpretation of the above quoted award provision and for no other purpose. He shall select a date, time and place mutually convenient to all panel members and shall permit only two adjournments in consideration of inclement weather, unforeseen circumstances and the like. Two panel members shall constitute a quorum entitled to vote on the matter before them. The panel shall be convened as soon as possible.
- (7) The City will be responsible for the charges and expenses of John Desmond and Local 589

will be responsible for the charges and expenses of Celestine Kelly, and the parties will equally share the expenses of Thomas F. Carey for attending this reconvened arbitration session.

- (8) In executive session the panel shall discuss the opposing views on the above and shall decide the matter by majority vote. The panel is not authorized to "compromise", but may only choose between the "tour rate" or "hourly rate" of compensating overtime.
- (9) The parties agree to abide by the majority vote of the arbitrators retroactive to January 1, 1980.

THE CITY OF NEWBURGH

William M. Kavanaugh
Attorney for the City of
Newburgh

By: Fredrick Miles
Acting City Manager

LOCAL 589 I.A.F.F.

Joseph Bones
Attorney for I.A.F.F.

By: Arthur Wilcox
President

The three member Panel met on that date and reviewed its role, responsibilities and limitations as prescribed in the Stipulation, with particular reference being made to Sections 3, 4, and 5.

All Panel members were afforded ample opportunities to discuss their opposing views and to reaffirm their respective interpretations of that section of the Award which addressed the "OVERTIME" provision. That aspect of the Award provided:

"(4) Overtime. Effective January 1, 1980 overtime shall be paid in cash at the rate of time and a half. If the employee opts for 'comp time', it shall be at the straight time rate."

The City's position is that overtime should be calculated on a "tour rate," while the Union's position maintains that overtime should be compensated on an "hourly rate."

After extended discussion by the Panel, it was evident the understanding of the individual partisan Panel members, as to the meaning of the Award language, reflected the positions espoused by their respective Parties. There is every reason to believe that this current understanding is the same interpretation held by the two advocate Panelists when they executed the tentative agreement on April 23, 1980. This is so, even though the original Award was unanimous. With such disparity of interpretation, the final determination rests then with the Chairman of the Panel.

It must be noted at the outset that the Panel is bound by the evidence that was presented to it at the time of the original hearings. It is not for the Panel to conduct a de novo proceeding on the facts or arguments. If an area of critical data, argument, or information was originally omitted by the Parties, either by omission or commission, it is not appropriate for the Panel to address such new data at this time.

The Chairman found then, and hereby reaffirms, that the underlying objectives reflected in his original determination on the "overtime" issue were:

- 1) To insure that there was consistency between "overtime" and "compensatory time" benefit with the eligible firefighter having the option of selecting either species.

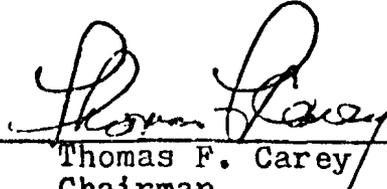
- 2) To change the rate of compensation for "overtime" from the then straight time calculation to a "time and a half" calculation.
- 3) To limit the application and use of earned compensatory time to a straight time basis.

There was no persuasive evidence, during the original arguments, that addressed the question of the then existing "tour rates" or how "extra tours of duty" were calculated for "overtime" or "compensatory time" purposes. It is the opinion of the Chairman, that while a correction of the existing formula was sought, the translation fairly consistently addressed the question of the need for "time and a half" versus "straight time" when an "extra tour" had to be worked. The issue of "overtime" was thus examined in those broad terms rather than any explicit terms, such as the "extra tour" being "booked" in the future on an "hourly" rather than "tour" basis.

In effect, what the Award provided was a change in the "rate" for the payment of overtime from "straight" to "time and one half." However, it is the determination and recollection of the Chairman that the "existing formula" by which "overtime" and "compensatory time" were calculated was never addressed by the Panel in its Award on overtime. This is not to say that the issue of the "existing formula" should not have been considered, but rather that the matter was never presented for our adjudication.

Assuming, arguendo, that one Party or the other contends it was presented to the Panel, the issue of "tour formula" and/or

any changes in its calculation was not reflected in the final determination of the Panel for the reasons stated heretofore.

A handwritten signature in cursive script, appearing to read "Thomas F. Carey", is written above a horizontal line.

Thomas F. Carey/
Chairman
Public Panel Member

DATED: May 20, 1980

STATE OF NEW YORK PUBLIC
EMPLOYMENT RELATIONS BOARD
CASE NO. I 58 M78-203

* * * * *
In the Matter of Arbitration between
CITY OF NEWBURGH, NEW YORK
and
THE INTERNATIONAL ASSOCIATION OF
FIRE FIGHTERS, LOCAL 589
* * * * *

INTERPRETATION
PRIOR AWARD OF
PUBLIC ARBITRATION
PANEL
(As Per Stipulation
of the Parties)

ARBITRATION PANEL

- THOMAS F. CAREY, Chairman, Public Panel Member
- JOHN DESMOND, Employer Panel Member
- CELESTINE KELLY, Employee Panel Member
(International Association of Fire Fighters)

INTERPRETATION

Prior Award of Public Arbitration Panel

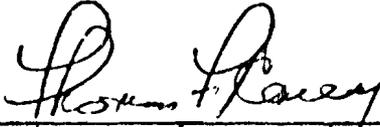
In accordance with the Stipulation entered into by the Parties (Supreme Court of the State of New York - County of Orange: Index 1229/80), the Interest Arbitration Panel met on May 16, 1980. The majority of the Panel, with the Employee member dissenting, hereby issues the following interpretation:

- 1) Overtime shall be paid for extra tours at time and a half of the "tour rate," which is time and a half of 1/5th of a member's weekly salary, whether the member works a 15-hour or 9-hour extra tour.

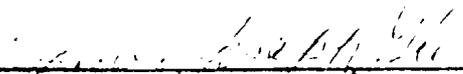
"Comp time" will be credited at the straight "tour rate," whether or not the member works a 9- or 15-hour tour, with the member continuing to have the option as to whether he utilizes a "9" or "15" hour tour for "comp time" purposes.

STATE OF NEW YORK)
COUNTY OF NASSAU)

On this 19th day of May 1980 before me personally came and appeared THOMAS F. CAREY, 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.



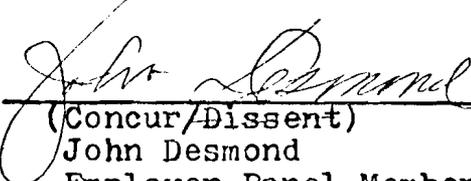
(Concur/~~Dissent~~)
Thomas F. Carey
Chairman of Panel



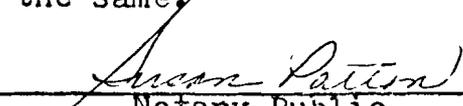
Notary Public
JAMES JOSEPH
NOTARY PUBLIC, State of New York
No. 30 6543135
Qualified in Nassau County
Commission Expires March 30, 1980

STATE OF NEW YORK *Pennsylvania*
COUNTY OF *Bucks*

On this *20th* day of *June* 1980 before me personally came and appeared JOHN DESMOND, 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.



(Concur/~~Dissent~~)
John Desmond
Employer Panel Member



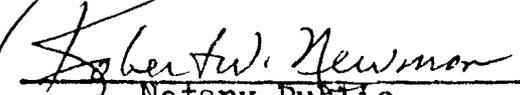
Notary Public
SUSAN PATTON, NOTARY PUBLIC
FALLS TOWNSHIP, BUCKS COUNTY
MY COMMISSION EXPIRES JUNE 13, 1983
Member, Pennsylvania Association of Notaries

PROVINCE NOVA SCOTIA
STATE OF NEW YORK
COUNTY OF HALIFAX

On this *17th* day of *JUNE* *Rw* 1980 before me personally came and appeared CELESTINE KELLY, 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.



(Concur/~~Dissent~~)
Celestine Kelly
Employee Panel Member



Notary Public

