

STATE OF NEW YORK PUBLIC EMPLOYMENT RELATIONS BOARD

-----X
In the Matter of the Arbitration

between

The City of Niagara Falls

and

The Niagara Falls Uniformed Firefighters
Association, Local 714, AFL-CIO
-----X

Case No.: IA-100-M78-648

Arbitration Panel:

Joel M. Douglas, Ph. D.,
Chairman

Robert S. Lasalla, Assistant City Manager,
City of Niagara Falls
Employer Arbitrator

Jacob A. Palillo, President,
Niagara Falls Uniformed Firefighters
Association, AFL-CIO, Local 714,
Employee Arbitrator

APPEARANCES:

For the City of Niagara Falls: Carl Mooradian, Esq., Corporation
Counsel, by Mark A. Violante, Esq.,
Assistant Corporation Counsel

Edward M. Cassidy, Director of
Human Resources

Lynn McDougall, Personnel
Director

Frank Colosi, Management Intern

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For the Firefighters: Bernard Stack, Esq.
Charles Palmore, Trustee, Local 714
Richard Frommert, Secretary, Local 714
Daniel F. Thomas, Vice President,
Local 714

Pursuant to Section 209.4 of the New York State Civil Service Law, the above named panel was designated to inquire into and make known their opinion and award with respect to this instant case. Hearings were held in the City of Niagara Falls during which time the parties were afforded full opportunity to present evidence, supporting data, cross-examine witnesses, and file briefs if requested. A transcript of this hearing was kept and is included as a portion thereof of the official record. The arbitration panel discussed, in the presence of the parties, the statutory criteria that would be utilized in the determination of this award. The panel also instructed the parties that any stipulations in terms of comparables would be of assistance in both organizational and expeditious sense.

The statutory provisions of Section 209.4 (v) of the New York State Civil Service Law were utilized in the preparation of this Award and are cited below:

Section 209.4 of the New York State Civil Service Law:
(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.

Approximately 42 items, many of which had numerous subsections, were presented to the panel for its consideration. All items have been fully discussed and recommendations have been issued in those instances where the panel believed a finding was warranted. In those instances where an item may have been withdrawn, or in those cases where it has not been granted by the panel, the item is deemed to have been denied. The panel also instructed the parties that absent a showing of reason and cause, the existing Collective Bargaining Agreement, except as modified by this award, would continue in full force and effect.

BACKGROUND:

The City of Niagara Falls, New York, is located in the northwestern part of New York State and is currently undergoing a major transition in the overall state of its economy. Its 80,000 residents are experiencing economic problems similar to the rest of New York State, and they have expressed their concern as to where the future might be taking them. A large portion of the City's economic planning is geared to the future, and to its hopes of becoming a regional center for casino gambling. Much of the downtown area of the City has undergone a construction renaissance which has created a new city center and hotels as the hub of a future convention area as well as leaving large parcels of land vacant in anticipation of future growth. In addition to the uncertainty of the future of casino gambling, the City also faces an immense potential economic liability from litigation over the Love Canal. While the potential liability numbers in the billions of dollars, the City has not yet been ordered to act on these claims. The City has been able to resolve in part its budgetary problems of the past several years, and is no longer operating with an annual deficit. The new city administration has been successful in reducing certain costly outlays and in obtaining greater productivity from its work force. Thus, in addition, the city administration has obtained funding for its new convention center and certain hotels from State and Federal sources.

The question of comparables, criteria normally utilized by interest arbitrators under the applicable civil service law, was addressed by the parties. Neither side was able to agree with the other as to which comparables should be utilized by the panel; thus, the panel allowed each party to submit what it considered to be relevant statistical data with respect to the issue. The Union argues that the following cities and their collective bargaining agreements are the ones that best reflect comparably with Niagara Falls.

<u>CITY</u>	<u>POPULATION</u>	<u>FIREFIGHTERS</u>	<u>UNIT SIZE</u>	<u>NUMBER OF PEOPLE EACH FIREFIGHTER PROTECTS</u>
Niagara Falls	82,000	129		635
Buffalo	407,000	796		511
Utica	82,000	161		509
Jamestown	40,000	80		500
Lockport	26,000	54		481
Binghamton	61,000	133		458

The employer submits that the comparables as stated above are not a true reflection of the City of Niagara Falls and argues that the following cities and municipalities are more representative in both demographic and economic areas. The agreements from the City of Tonawanda, the City of North Tonawanda, and the City of Kenmore, all located in the western part of New York

State, were submitted as comparables by the City. The panel requested the submission of the Collective Bargaining Agreements from the eight cities mentioned, as well as a variety of exhibits from the State of New York Public Employment Relations Board, summarizing conditions of employment for firefighter personnel.

At the outset of the hearing, a great deal of discussion ensued regarding the role of unit determination. The original firefighter bargaining unit for the City of Niagara Falls, from the time of inception of collective bargaining until April 6, 1979, included firefighters, captains, and batallion chiefs. In April the Public Employment Relations Board duly certified the captains and batallion chiefs as a separate unit, thereby reducing the size of the firefighter unit from approximately 180 to 130. The Chairman stressed at the outset of the hearing that this issue of unit determination was not properly before the panel inasmuch as this question of concerns arising out of the newly designated unit should be addressed by PERB itself.

A series of procedural and substantive problems resulted over the issue of amending negotiation demands submitted by Local 714 prior to the designation of the fire officers unit. The City filed an Improper Practice charge against the Union with respect to certain demands; however, this claim was re-

jected by PERB. The Chairman wishes to reiterate that the findings in this award concern only the unit at impasse in this proceeding and all demands pertaining to non-unit personnel have been rejected.

ISSUES:

ITEM #1. SALARY: The Union is seeking a wage increase effective January 1, 1979, equal to the C.P.I. for the Buffalo area for the year 1977 and an additional increase effective July 1, 1979 equal to the Buffalo C.P.I. for the year 1978. Thus, in sum, the Union is seeking to make up for what it considers to be a past inequity by receiving retroactive increases for the years 1977 and 1978 in addition to a commensurate raise for the year 1979. The Employer presented a proposal that would increase salaries by 4% for 1979 and an additional 4% in 1980. Both parties are to be commended for their preparation of the financial documents submitted to the panel. The data was developed in such a manner as to reflect the statutory criteria as set forth by the Taylor Law, and it proved to be of great assistance in the formulation of this award. The Union claims that the C.P.I. for the year 1979 approached double digit inflation, an argument that appears to be borne out as we move toward the closing days of 1979. In addition the Union submits that there is no indication that the rise in the C.P.I. will

slow down; and, indeed, the 1980 C.P.I. as projected will be one of double digits as well. Numerous statistical data reflecting both the national and the Buffalo C.P.I.'s were submitted to the panel and analyzed by the panel in the formulation of this award.

The Union maintains that the City has the ability to pay the wage increases proposed by the Union; and, indeed, the City will end this year in a surplus position. They claim that fund balances for the past two fiscal years were 2.1 million for 1978, and 1.3 million for 1977. This is a marked improvement from a deficit of over 5 million for fiscal 1976. Thus, the City has been successful in reversing a deficit problem and moving toward budget surpluses in their overall operating condition.

In addition it is argued that the City has not exhausted its constitutional tax limits with a 1979 margin left of approximately 2.2 million. The fiscal 1978 margin was slightly over 2 million. The City's margin as a percent of its taxing limit is approximately 15% for 1979, and while claims can be made that the employer has an obligation to tax at 99%, the Union does point out that the City has not exhausted its potential tax revenue.

With respect to tax rates, the City is currently operating at a full value tax rate of approximately \$19.02 for 1979,

the same approximate rate then in force in the early part of 1976. Thus, for a period of some four years now the taxpayers of Niagara Falls have enjoyed relative stability in full value tax rates.

The Union also maintains that the City is in an excellent financial position with respect to percentage of debt limit exhausted. Under its 1978 constitutional debt limit, the City utilized approximately 47% of their allowable amount, a reduction from 56% at the end of fiscal 1977. Although the Union is not claiming that money from the capital fund should be used to increase firefighters' salaries, it does point out that the City is in a relatively stable position with respect to debt limit, with the sole exception of its obligation to the Urban Development Corporation. In addition, the City anticipates 3 million dollars in fiscal 1980, payable to the U.D.C. account and stresses that obligations incurred from the convention center do not affect debt margin.

The City's position is that while its past financial problems have partially been resolved, its economic future is not so bright as the Union would like one to believe. They claim that the firefighters are but one unit currently in negotiations with the City, and a substantial increase in this unit's wages would have an adverse effect on the City's overall labor rela-

tions position. In addition, the City stresses that its potential financial obligation from Love Canal environmental claims is enormous and that the panel must take this factor into account. While the State of New York has maintained it would hold the City harmless from potential Love Canal liabilities, this has not been the case as substantial payouts without reimbursement have already been made.

The City also submits that while casino gambling is a potential source for future funding, it is a long way from reality. They also claim that if the convention center and tourist attractions currently in the City were to be adversely affected by the casino situation then the City's tax base would be severely damaged.

In addition, the City stresses that it is having severe problems with its library and potential claims from the Water Department which must be taken into consideration in this award.

The City also argues that the total real cost for one firefighter is \$23,563.00 per year, and that this cost places Niagara Falls firefighters above the majority of their colleagues in the western part of the State. In addition, with overtime compensation, the average member of Local 714 earned \$15,794 in 1978, an amount that puts them far ahead of any of the comparables. The Union refutes this position and claims that the overtime is

actually forced overtime due to a shortage of manpower within the department.

The City also maintains that firefighter earnings have increased far in excess of the cost of living. The firefighter base salary on Step One from 1967 to 1978 increased by an amount equal to 131% while the C.P.I. for the region increased 92% for the same time period. Thus, the City sees no reason why it must assume the cost of keeping the firefighters ahead of the inflation rate. Furthermore, one must consider the cost of recent Blue Cross increases in the amount of 5% in April, 1979, as well as the cancellation of the City's public liability insurance carrier as additional financial obligations.

Both parties asked the panel to consider the Ernst & Ernst Quarterly Report, The City of Niagara Falls Budget Report submitted to New York State, and the most recent bond prospectus in the formulation of this award. While the parties are free to consider those aspects of each report that are supportive of their respective positions, the determination of this panel is twofold: that the City has a legitimate concern over future economic liabilities, and that moderate increases are affordable this year and next.

Thus, based on the record submitted and in accordance with the statutory criteria set forth in the New York State

Taylor Law, the panel awards an increase of 8% retroactive to January 1, 1979 and an increase of an additional 8% for the year 1980.

ITEM #2. HEALTH INSURANCE--BLUE CROSS AND BLUE SHIELD:

The firefighters seek an increase in the present medical insurance package so as to reflect a contribution by the City of the total cost of premiums paid. The present formula calls for the City to absorb the largest part of the premiums requiring the firefighters to pay only a portion of the major medical benefits that were negotiated in the last Agreement. It is significant to note that the recent Interest Arbitration Award covering the police union included this major medical benefit, and based it in part on a comparison with the firefighters' fringe package. The Chairman of the arbitration panel sees no reason why this plan should now be altered. The panel finds that the current Blue Cross-Blue Shield Benefit plan for firefighters parallels those of the comparables submitted; and thus, recommends no change in the plan at this time.

ITEM #3. AGE LIMIT FOR RETIREE HEALTH PLAN: Concomitant with the request for an increase in Blue Cross and Blue Shield plans the Union is also seeking a change in the eligibility age limit retirement formula under which retirees are eligible for group hospitalization and surgical benefits if their age and years of service with the City of Niagara Falls totals 75.

The Union is seeking to reduce this eligibility age combination total to 70. A great deal of data was submitted with respect to retirement costs, along with an additional Union request to change the overall retirement plan. The sum and substance of the Union proposal is in reality a difficult cost item to project inasmuch as this charge might serve as an added inducement for early retirement, thus creating a situation whereby men would be replaced at a much lower rate of compensation than senior firefighters are now being paid.

The Union also seeks elimination from the contract of a proviso that prohibits employees who retire before the age of 55 to be eligible for the retirement health plan.

Based on the record submitted, the panel hereby Awards that a change be implemented in Article XI, Section 2 (a) which would reduce the present age and years combination from 75 to 70 in order to be eligible to receive group hospitalization and surgical benefits. No other change is recommended with respect to either the retiree health benefit or overall pension plans at this time.

ITEM #4. PERSONAL LEAVE: The Union is seeking an increase in personal leave from the present three days to four days, while the Employer is seeking to control the expenditure of said leave which it has claimed to have been abused at times. The area of

alleged abuse concerns employees who leave the Fire Department prior to the end of a calendar year and have utilized all allowable personal leave without any pro-rated benefit being returned to the City.

The City proposes that the personal leave be utilized at any time during the calendar year for which it is authorized; however, should a firefighter leave employment prior to the end of the calendar year, the City would have the right to recapture certain portions of that leave out of the final pay due that employee. For purposes of illustration, an employee who utilizes his three days in January and leaves prior to March would have to repay the City two of these days.

The Union is seeking to expand personal leave days from the present three to four; however, a careful examination of the leave statistics submitted by the parties does not appear to warrant that increase. What is recommended by the panel is that the needs of both parties be met inasmuch as a change be authorized in the present leave policy to provide for three personal leave days per year, but not charging any of them, as is the practice now, to accumulated sick leave. In addition, the City is awarded the right to recapture personal leave on the pro-rated basis of one personal leave day awarded for each four months of the year. Thus, while a firefighter may use all three of his personal leave days in early January, in the event of his

leaving his position prior to the end of the calendar year, the City can recapture said leave based on a pro-rated formula.

ITEM #5. TERMINATION PAY: The Union proposed a new formula to encourage early retirement based on the concept of termination pay. However, the Union was unable to meet the burden as set forth in the Taylow Law to substantiate this claim, and thus it is rejected at this time.

ITEM #6. UNUSED SICK PAY UPON RETIREMENT: This proposal, similar to the one stated above, was geared to the concept of an early retirement program. However, the data submitted failed to substantiate any change being warranted at this time in the existing plan found in the City Ordinance. Thus, the panel recommends no change in this area at this time.

ITEM #7. BEREAVEMENT LEAVE: The present bereavement leave formula allows for leave to be taken in the case of the death of a member of the immediate family. The immediate family is confined to mother, father, in-law, spouse, siblings, child, or relative residing within the household of the employee. The Union seeks to expand this coverage to grandparents, aunts and uncles in terms of a one day leave in the event of this loss.

After a careful examination of the record submitted, the panel hereby Awards that the definition of bereavement leave be

extended to include relatives not previously defined as part of the immediate family in the existing Collective Bargaining Agreement.

ITEM #8. PENSION: In addition to the present retirement plans, the Union seeks additional protections in the form of the provisions of Plan 375 (I). Those familiar with the cost of pension plans in the State of New York are well aware of the costs incurred as various options are added to existing plans; and based on the record submitted, the Union is unable to meet the burden of showing why increases in retirement should be awarded at this time. Thus, no increase in pension plans is recommended by this panel.

ITEM #9. CLOTHING ALLOWANCE: The Union seeks a change in the uniform allowance designed primarily to insure compliance by the City with the clothing provisions of the existing Agreement. The City claims that it is not in default with respect to the existing Agreement and if the Union has difficulty with the City's clothing policies then it should seek relief through the grievance machinery. The Union maintains that in order to do so it would incur additional financial expenses and what it seeks from the panel is enforcement of cash payment as an alternative to the present clothing issue.

While the Chairman is convinced that there are certain problems with the application of the current uniform and clothing provisions in the Collective Bargaining Agreement, he fails to see how this forum is the appropriate one in which to seek redress for contract grievances. He is persuaded by the City's position that if indeed a problem does exist, then the appropriate remedy for said problem is to file a contract grievance. Thus, no change is recommended with respect to uniform allowances at this time.

ITEM #10. SAFETY COMMITTEE: The Union seeks the establishment of a joint Safety Committee consisting of two representatives from the City and two representatives selected by the Local. They have submitted a detailed procedural plan dealing with approximately 12 operational aspects of the Committee. In the event of a deadlock on any safety item, the Union proposes the submission of said controversy to binding arbitration in accordance with the existing contractual grievance procedure.

The City claims that a great many of the items suggested by the Union as safety topics and considerations belong in the category of management prerogative and that decisions and recommendations as to safety from said Committee can only be considered as recommendation to the City Manager.

The need for a Safety Committee within the firefighting profession is apparent. The nature of the job, as well as the legal restrictions over certain scope of negotiations issues pertaining to firefighting, have created a need for a forum in which information can be exchanged by both parties concerning the other's perceptions and needs. It is for that reason that the creation of a Joint Safety Committee is awarded. In the event that the parties are unable to reach agreement with respect to particular items, then advisory arbitration should be utilized. This will allow the parties a new perspective on safety problems, and yet it will not place the City in a position of having items that it considers to be beyond the scope of negotiations imposed upon them.

ITEM #11. This item was not submitted to the panel for a determination.

ITEM #12. This item was not submitted to the panel for a determination.

ITEM #13. DIFFERENTIAL PAY RANKS: The Union is seeking to maintain a 15% differential in pay between ranks between that of a Third Step firefighter and the position of captains and deputy chiefs. The Union presented an elaborate justification as to why this demand should be granted, the heart of which revolved

around the creation of a new unit of fire officers by the State PERB. The Union believes that the City had promised the officers, as part of the reward for splitting from the Firefighters Union, substantial raises. It is for this reason that the Union seeks protection by coupling their raise to that of the officer unit.

The City denies this so-called promise and indeed filed an Improper Practice charge with the State during the course of the negotiations with respect to this item. This Improper Practice was not accepted by PERB due to a procedural defect, and thus it was returned without action to the City.

The Union claims that what it seeks is not a parity relationship with the fire officers, but a combination of a "most favored nation" clause, and an "evergreen" arrangement.

The Chairman, after a careful examination of all the materials presented with respect to this item, does not see any justification for its being awarded at this time; thus, this request is denied.

ITEM #14. This item was not submitted to the panel for a determination.

ITEM #15. SICK LEAVE PAY: The Union seeks the establishment of a Sick Leave Bank to cover long-term illness. They proposed that the Employer, as well as each firefighter, each contribute one day to a newly formed bank and that any member can use a total of one-half of the numbers of days he had eligible when he became sick after exhausting his own leave credits. The City argues that the present sick leave plan is adequate, and that to increase it would be a cost item that the City could not absorb at this time.

Sick leave banks, while perhaps new to firefighters, are not new in the public sector employment relationship. They exist statewide in a variety of units and are often based on the concept of self-insurance with no employer liability. Thus, while the plan submitted by the Union seeks a matching contribution of one day from the City and one day from the firefighters, that plan is rejected and is replaced with the awarding of a sick leave bank whereby each member of Local 714 may contribute up to two days of accumulated sick leave per year. This bank is to be administered by three representatives from Local 714 and two representatives from the City of Niagara Falls; said committee of five is then to establish the administrative rules pertaining to the procedural running of this bank.

ITEM #16. This item was not submitted to the panel for a determination.

ITEM #17. This item was not submitted to the panel for a determination.

ITEM #18. This item was not submitted to the panel for a determination.

ITEM #19. CONTINUATION OF AGREEMENT: The Union seeks language mandating that all the terms in the existing agreement not "touched by this award shall remain in force." In reality the Chairman does not understand the need for this since interest arbitration awards are written on the premise that the existing agreement, except as amended by the award, continues in force. However, since Item 19 would be awarded in any fashion at the outset of the Award, the Union's request is hereby granted.

ITEM #20. This item was not submitted to the panel for a determination.

ITEM #21. This item was not submitted to the panel for a determination.

ITEM #22. This item was not submitted to the panel for a determination.

ITEM #23. HAZARDOUS DUTY PAY: The Union seeks language establishing a new salary section which would mandate hazardous duty pay when a firefighter is assigned to work on an apparatus without another firefighter to assist him. This rate of pay shall be paid at twice the hourly rate for all hours worked in this assignment.

The City argues that this is merely a back door to the "manning" issue which the courts have held to be a non-negotiable item, and that for the Union to seek economic sanctions in this area is improper. In addition, the Union states that even if it were legal, the management of the City has the right to deploy its firefighting force in a way that it judges to be the most attractive and that economic sanctions paid to the Union are not justified.

When asked by the Chairman of the panel to cite examples of hazardous duty pay of this type, the Union stated that at this time it was unable to do so.

The Chairman is persuaded by the arguments raised by the City; and, at this time, this request is hereby denied.

ITEM #24. This item was not submitted to the panel for a determination.

ITEM #25. SENIORITY QUALIFICATIONS: The Union seeks to remove that aspect of the seniority provisions in the collective agreement whereby management can use the criterion of "suitability" as it pertains to promotions, vacancies, and acting in a higher rank. The Union maintains that this criterion has been abused by the City and that the only equity in this area would be to mandate absolute seniority.

The City argues that for many years this concept has prevailed and that it affords the Fire Department managers the necessary flexibility and control that are needed to operate the enterprise properly and efficiently.

The Chairman of the panel is not persuaded by the arguments offered by the Union with respect to this issue; and, therefore, they are hereby denied.

ITEM #26. FIRE PREVENTION PERSONNEL: This demand dealt with the placing of fire prevention personnel on certain standby recall lists according to seniority. The lists in question concern manning and other emergency duties. The City maintains that the present operation of the lists is suitable, and the Chairman agrees that no change is warranted in the administration of these lists at this time.

ITEM #27. This item was not submitted to the panel for a determination.

ITEM #28. CONTINUATION CLAUSE: The Union seeks language which would mandate the continuation of the newly awarded agreement until a successor agreement is negotiated and in place. The City rejects this concept; and, absent a showing by the Union, the Chairman recommends no change with respect to this matter.

ITEM #29. This item was not submitted to the panel for a determination.

ITEM #30. PERSONNEL FILES: Local 714 maintains that the City is keeping more than one set of personnel files for individual firemen and that the Union is being denied due process procedural and substantive protections and rights with respect to personnel actions. Specifically, the Union maintains that it cannot adequately defend its members against charges when the City is maintaining double lists for alleged job infractions.

The City acknowledged that there was some duplication of records, and thus the Chairman recommends the merging of all personnel files into one. Each individual shall have complete access to all materials in said file and have the right of response, acknowledgment, and rebuttal to materials placed in the

file. No unsigned material is to be placed into said file and said file may be reviewed at reasonable times by an individual firefighter accompanied by his Union delegate.

ITEM #31. This item was not submitted to the panel for a determination.

ITEM #32. This item was not submitted to the panel for a determination.

ITEM #33. This item was not submitted to the panel for a determination.

ITEM #34. STANDBY PAY: The Union seeks an increase in standby pay; however, in accordance with the criteria set forth at the outset by the Chairman, and absent a proper showing, this demand is not awarded at this time.

CITY DEMANDS:

I. The City seeks relief from what it considers to be an abuse of sick leave citing numerous statistics in terms of detailing the present sick leave plan and how, in its belief, certain problems can be remedied. They seek a sick leave schedule which would mandate progressive discipline when it considers sick leave abuse to have taken place. This plan

would provide for a certain number of allowable absences during any quarter of the year and would provide for a series of oral and then written warnings when the number of days in question is in excess of the allowable limit.

The City also seeks to maintain the right to have employees examined by a physician of the City's choice when it believes that such an examination is warranted.

The Union denied that any abuse has occurred; however, the Chairman, after a careful examination of the City's demands and the Union's response, Awards the following:

- a. The City shall maintain the right to have an employee examined by a physician of its choice when it believes that such an examination is warranted.
- b. A department head may recommend disciplinary action when he has reviewed the employee's sick leave record taking into account the employee's pattern of absenteeism, efforts to improve attendance, and any extenuating circumstances which may be present.
- c. After a period of five absences during a calendar year, the City may require a physician's letter regardless of the number of days taken in a subsequent period of absence. If an employee submits a physician's certificate when it has not been required, that period of absence shall not be counted toward the total of five.
- d. On the fifth period of absence in two consecutive quarters, the Department Head shall counsel the employee and demand a written explanation as well as a doctor's note covering diagnosis and prognosis.

e. When an employee is absent because of personal, non-work related illness for a period of three or more days, a physician's letter will be required and submitted within seven working days of returning to work in order for the absence to be charged against sick leave credit.

II. PERSONAL LEAVE: The City requested a pro-rating concept which has been addressed earlier in the firefighters' demands pertaining to this issue. See Item #4.

III. HOLIDAY ELIGIBILITY: The City seeks to have an employee work the full scheduled workday immediately preceding and immediately following a holiday in order to receive that holiday. The City claims that there is a pattern of abuse with respect to holiday sick leave frequency and that this provision is needed to curb it.

The Union submits that this item has not been adequately proven and that it is the City which bears the burden in this area.

After a careful examination of the record before him, the Chairman recommends no change with respect to holiday eligibility.

IV. VACATION: The City has proposed a new vacation policy reflecting reductions in the amount of vacation awarded, the amount of allowable vacation credits accumulated, and the pay-out procedure whereby each firefighter must utilize vacations within a specified time period or lose it. At the crux of this problem, the City argues, is the long-standing accumulation policy whereby a firefighter can earn vacation pay at a certain rate and then be compensated for it at a much higher rate.

The Union maintains that the present vacation policy is consistent with that of the rest of the State and sees no reason for change.

After a careful examination of the record, no change in said vacation policy is awarded at this time.

V. GRIEVANCE PROCEDURE: The City seeks modification of the grievance procedure whereby PERB arbitration lists will consist only of arbitrators from the western part of New York State. While this procedural request is somewhat unique and speaks to the cost items only, the Chairman believes it unfair to deny the Union and the City access to arbitrators from the entire State; and, thus, this request is denied at this time.

AWARD:

Except as modified below, or as previously agreed upon by the parties in the course of collective negotiations, the current Collective Bargaining Agreement between parties shall continue in full force and effect except as amended below:

1. Salary: Effective January 1, 1979, all wages shall be increased by 8%. Effective January 1, 1980 a pay raise of 8% shall be awarded. This award shall be retroactive to said dates.

All retroactive wages shall be paid in a separate paycheck, not combined with the regular check.

2. Article XI, Section 2 (a) shall read that the number 70 replace the number 75 in order to be eligible to receive group hospitalization and surgical benefits for retirees.
3. Personal Leave shall be modified so that three days leave may be granted without any deductions from accumulated sick leave. In the event that a firefighter leaves the service prior to December 31 of any given year, his leave entitlement for that year shall be pro-rated at one (1) day's personal leave per four (4) months.
4. Bereavement entitlement shall be expanded so that one (1) day of bereavement leave may be taken for relatives not previously defined as part of the immediate family in the existing Agreement.

5. A joint Safety Committee shall be established consisting of two (2) representatives from the City and two (2) representatives from the Union. Said Committee shall establish its own procedural guidelines; however, in the event that the parties are unable to reach agreement with respect to any procedural or substantive item, advisory arbitration shall be utilized. Both sides shall share equally the cost, if any, of the arbitrator.

6. A Sick Leave Bank shall be established as part of the overall sick leave policy. Unit members shall be eligible to contribute up to two (2) sick days per year to said bank. The bank shall be administered by three (3) representatives from the Union and two (2) from the City. The City shall not be required to make any contribution in terms of sick days to said bank.

7. All items in the expired Agreement not amended by this Award shall continue in full force and effect.

8. The City shall be required to keep only one set of personnel files. Individual unit members shall have complete access to all materials in this file. This shall include the right of response, acknowledgement, rebuttal, and the right to place materials in the file. No unsigned materials are to be placed in said file, and the file may be reviewed at reasonable times by the individual accompanied by his Union delegate.

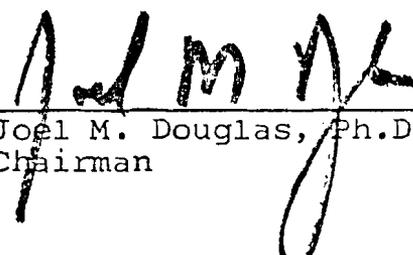
9. The sick leave policy shall continue in full force and effect except as amended herein:
 - (a) The City shall retain the right to have an employee examined by a physician of the City's choice when it believes that such examination is warranted.

(b) A department head may recommend disciplinary action when he has reviewed the employee's sick leave record taking into account the employee's pattern of absenteeism, efforts to improve attendance, and any extenuating circumstances which may be present.

(c) After a period of five absences during a calendar year, the City may require a physician's letter regardless of the number of days taken in a subsequent period of absence. If an employee submits a physician's certificate when it has not been required, that period of absence shall not be counted toward the total of five.

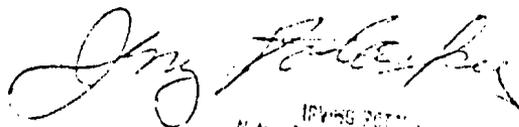
(d) On the fifth period of absence in two consecutive quarters, the Department Head shall counsel the employee and demand a written explanation as well as a doctor's note covering diagnosis and prognosis.

(e) When an employee is absent because of personal, non-work related illness for a period of three or more days, a physician's letter will be required and submitted within seven (7) working days of returning to work in order for the absence to be charged against sick leave credit.


Joel M. Douglas, Ph.D.,
Chairman

State of New York
County of New York

On this 19 day of November, 1979, before me personally came and appeared Joel M. Douglas 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, State of New York
No. 410111005
Qualified in the County of
Essex, New York, March 30, 1981

DEC 14 1979

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Robert S. Lasalla,
Employer Arbitrator

State of New York
County of

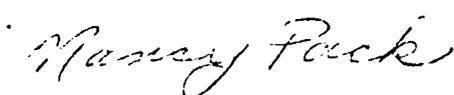
On this day of , 1979, before me personally came and appeared Robert S. Lasalla to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.



Jacob A. Palillo
Employee Arbitrator

State of New York
County of *Niagara*

On this *11th* day of *December* , 1979, before me personally came and appeared Jacob A. Palillo 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.



NANCY PACK
Notary Public, State of New York
Appointed in Niagara County
Commission expires March 30, 19*81*