

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

U.S. PUBLIC EMPLOYEES
RELATIONS BOARD
RECEIVED
MAY 18 1981
CONCILIATION

----- x
In the Matter of the Compulsory Interest Arbitration :

- between :

CITY OF YONKERS :

"City" :

- and - :

YONKERS MUNICIPAL UNIONS'S COALITION :

"Coalition" :
----- x

Case No. 1A81-7;
M80-399

APPEARANCES

For the City

Irving T. Bergman, Esq., Special Counsel

For the Coalition

Brian M. Lucyk, Esq., Attorney for Local 456
Thomas F. DeSoye, Esq., Attorney for Local 628
Jeffrey Weingard, Esq., Attorney for U.F.O.A.
John R. Harold, Esq., Attorney for Captains,
Lieutenants, and Sergeants Association

BEFORE: PUBLIC ARBITRATION PANEL

John Connolly, Esq., Union Panel Member
Bruce Tolbert, Esq., Employer Panel Member
Martin F. Scheinman, Esq., Chairman

BACKGROUND

The City and Local 628, I.A.F.F., Local 456, I.B.T., the U.F.O A. and the Yonkers Captains, Lieutenants and Sergeants Association ("Coalition") engaged in negotiations for successor agreements to the respective Agreements which expired on June 30, 1980. On September 3, 1980, the City and the Coalition agreed to an Agreement to be effective from July 1, 1980 through December 31, 1981. Salaries were to increase as follows: 4% of the annual base salary as of June 30, 1980, to be effective July 1, 1980, 4% of the annual base salary as of June 30, 1980, to be effective January 1, 1981, and 5% of annual base salary as of June 30, 1981, to be effective as of July 1, 1981.

Negotiations as to the Coalition's demand for increase in the fringe benefits area, and the City's demands for changes in the fringe benefits area, continued through Mid-April 1981. Suffice it to say, those negotiations were not fruitful. Negotiations broke down on several occasions, and the media reported concerted activities on the part of members of the unions in the Coalition.

Mediators were assigned by the New York State Public Employment Relations Board to assist the parties in their efforts to obtain an agreement to succeed the expired Agreements in regard to fringe benefits. The efforts of the Mediators were instrumental in getting the members of the Coalition to report to work on April 17, 1981. Their recommendation proved to be the basis of the agreement to submit the underlying

fringe benefit dispute to interest arbitration.

The Mediators' recommendation, dated April 17, 1981, stated as follows:

1. The parties shall proceed to interest arbitration as provided in the Taylor Law which shall be concluded by May 8, 1981. The parties agree that all demands of all parties relating to fringe benefits shall be vented to and considered by the arbitration panel. Any fringe benefit payment which may be forthcoming shall be payable July 1, 1981.
2. It is agreed that the parties shall stipulate to the arbitration panel the agreement on the general salary increases as agreed to by the parties on September 3, 1980.
3. As provided in the Taylor Law, the arbitration award shall be final and binding on all parties except that as to Local 456 the award shall be final and binding subject to the approval of the city council.
4. This agreement is contingent upon an immediate return to work of all employees represented by the union commencing with the shift scheduled at 6:00 P.M. on April 17, 1981.

This Mediators' recommendation was accepted by the City and the Coalition.

On April 18, 1981, Irving T. Bergman, Special Counsel for the City and Thomas F. DeSoye, on behalf of the Coalition, wrote to Erwin J. Kelly, Director of Conciliation, New York State Public Relations Board, asking PERB to institute procedures so that an impartial arbitrator may be designated for the dispute.

Pursuant to Section 209.4 of the New York State Civil Service Law, the New York State Public Employment Relations Board, on April 24, 1981, designated a Public Arbitration Panel to make determinations of the outstanding issues in this dispute between the parties. Martin F. Scheinman, Esq., was designated as the Chairman, John Connolly, Esq., was designated as the Union Panel Member and Bruce Tolbert, Esq., was designated to serve as the Employer Panel Member.

Hearings in this matter were held during the weekend of April 24, 1981. All hearings were held in New York City, New York. At those hearings both sides were afforded full opportunity to introduce evidence and arguments in support of the respective positions. Closing arguments were also presented. The parties waived written transcript.

At the conclusion of the hearings, the Panel met in executive session. This Opinion and Award was drafted by the Chairman, Martin F. Scheinman, Esq. He is solely responsible for the language selected.

The Open Issues

The following issues were presented to the Panel for a "just and reasonable determination" pursuant to Section 209.4. The Coalition introduced the following demands:

Local 456, IBT

Welfare Fund	\$580.00
Supplemental Payment	<u>300.00</u>
	\$880.00

Local 628, Yonkers Firefighters

Uniform Allowance	\$200.00
Supplemental Payment	<u>680.00</u>
	\$880.00

Uniform Fire Officer's Association

Variable Benefit Fund	\$150.00
Uniform Allowance	200.00
Supplemental Payment	<u>530.00</u>
	\$880.00

Captains, Lieutenants and Sergeants Association

Welfare Fund	\$380.00
Uniform Allowance	200.00
Supplemental Payment	<u>300.00</u>
	\$880.00

The City introduced approximately twenty demands for each unit. Several of these demands were withdrawn at the hearing. In addition, many of the issues are common to all four contracts. The basic issues are as follows:

1. Work Schedule
2. Rate of Pay
3. Longevity
4. Call-Back Pay
5. Overtime
6. Out-Of-Title Pay
7. Personal Leave
8. Grievance Procedure
9. Zipper Clause
10. No Strike Affirmation
11. Maternity Leave
12. Night Differential
13. Court Time
14. Training Time
15. Association Activities
16. Medical Examination Program
17. Mutual Swap

Statutory Criteria

In making our "just and reasonable determination" we are mindful of the relevant criteria specified in Section 209.4. We have considered these criteria in great detail in reaching our conclusions below. Specific reference to some of the criteria appears in the DISCUSSION AND FINDINGS section. The Panel is required to consider:

- a. comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities.
- b. the interest and welfare of the public and the financial ability of the public employer to pay;
- c. comparison of peculiarities in regard to other trades or professions, including specifically, (1) hazards of employment; (2) physical qualifications; (3) educational qualifications; (4) mental qualifications; (5) job training and skills;
- d. such other factors which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment.

DISCUSSION AND FINDINGS

Comparability

The statute requires the Panel to compare the conditions of employment of the members of the Coalition with similarly situated employees in comparable communities e.g. in terms of skills and services provided. While both sides introduced evidence on the issue of comparability, the fact remains that this was not a major thrust of either side's presentation. Far more attention was addressed to the question of the City's ability to pay.

A review of the skills and services provided by members of the Coalition, as well as the benefits received under the terms of their respective Agreements, convinces us that the employees represented by the Coalition receive salary and other benefits consistent with those employed in comparable communities. That is, the employees of the City perform their functions in a surrounding that is similar to those of employees situated in comparable cities e.g. Mount Vernon, White Plains and New Rochelle. In terms of benefit level, the employees of the City are compensated similarly to the employees of those cities.

In sum, we are persuaded that the fringe benefit payment increase awarded below will not depart from this pattern. Stated simply, in terms of comparability, our Award will not, in any way, alter the basic consistency between the total compensation in the surrounding communities and that in Yonkers.

Ability to Pay

By far the major thrust of both parties's presentation to the Panel concerned the City's financial viability. Throughout its submissions to the Panel, the Coalition insisted that the City had the financial wherewithal to pay each employee represented by the Coalition the \$880.00 demanded. In its view, the City was able to raise the necessary revenue to pay the \$827,000.00 necessary to meet the Coalition's demand (940 employees multiplied by \$880.00).

The City, on the other hand, asserted the financial situation for the fiscal year beginning with July 1, 1981, made it impossible to meet the Coalition's demands. It argued that the City, already seriously in debt, could not afford to increase the fringe benefit payment in any way.

The Coalition argued that the citizens of Yonkers pay one of the lowest real property tax rates in Westchester County. Specifically, it notes that the overall full value range is 39.08 in Yonkers whereas other Westchester County cities pay far higher tax rates e.g. Mount Vernon 49.98 and New Rochelle 44.93. Given the low real property tax rate in Yonkers, the Coalition insisted that it was reasonable to have citizens pay other taxes which add up to approximate comparability with the other Westchester communities.

In regard to the potentiality for other taxes, the Coalition asserted that two different City Managers have

proposed increased taxes to the City Council. Both Pat Ravo and Eugene Fox proposed that a Refu^Sge Collection Fee and Motor Vehicle Tax be established. In addition, both requested the Real Estate Transfer Tax be increased. These new taxes would have raised approximately six million dollars. In the Coalition's view, the City Council's action is responsible for any budget deficit that may arise in the fiscal year 1980-81.

The Coalition also urged that Yonkers has enjoyed budget surpluses in prior years. It notes that there was a surplus in the 1976-77, 1977-78, 1978-79 and 1979-80 fiscal years. For this reason, the Coalition maintained that the fiscal instability in Yonkers, that was prevalent in the early 1970's, is no longer operative.

Finally, the Coalition insists that the primary responsibility for any fiscal difficulties in Yonkers falls upon the State Legislature. It argued that the State Aid formula treats Yonkers unfairly. For example, the Coalition notes that Yonkers, one of the five dependent school districts in the State, receives far less State Aid than the other dependent school districts. According to the City's own figures, Buffalo receives 55.5% of its board of education budget, Syracuse receives 48.2%, New York City receives 42.5%, Rochester receives 34.7% while Yonkers receives but 22.9% of its board of education budget from the State. In terms of dollars, if Yonkers was treated in the same fashion as Buffalo, an additional twenty-six million dollars in State Aid would be received by the City.

The Coalition maintains that its membership should not be prejudiced because the State has failed in its obligation to provide adequate and equitable State Aid to the City. In sum, it contended that the City cannot hide behind any budget deficit when it was caused by factors, external to Yonkers and the City Council's consistent refusal to authorize the funds necessary to operate the City.

The City argued that it faced a serious financial situation, caused by a variety of factors making it impossible for it to afford to pay any additional monies for fringe benefits. Stated simply, it maintained that there is a compelling showing that Yonkers has no ability to pay.

To begin with, the City asserted that pursuant to the 1976 Budget Act, Yonkers may only budget revenue that is certifiable. Unlike other municipalities, Yonkers is precluded from including anticipated revenue in their proposed budgets. This, the City argued, may not be done under the express terms of the Budget Act.

The City urged that there will be an operating deficit of approximately four million dollars during fiscal year 1980-81. This figure represents the calculation as of April 12, 1981. As far as 1981-82 is concerned, the City anticipates a budget deficit in the neighborhood of twenty-five million dollars.

The City notes that it operates, at the present time,

under tight fiscal controls. There is a hiring and purchasing freeze. It notes that the full complement of authorized work force now stands between 1640 and 1650 employees. This compares with a complement of approximately 1800 in 1979-80; there was approximately 2300 personnel in 1975.

The City argued that a primary source of its financial difficulties is the fact that Yonkers is one of the five municipalities with a dependent school district. This means that the 2% constitutional tax limit applies to both the City and Board of Education. Since the Board of Education's budget is more than eighty million dollars and the constitutional tax limit is but fifty-four million dollars, the City is left with no money from real property taxes to fund city services. That is, as a result of the Board of Education taking the entire constitutional tax limit, the City operates its budget entirely out of sales tax, utility tax, revenue sharing, State Aid, fees and charges, parking tickets, etc. The City maintained that it is the only one of the "Big 5" cities, those with dependent school districts, which is at its constitutional tax limit.

Thus, the City stressed that the low real property tax paid by the citizens of Yonkers is due to the fact that Yonkers is not constitutionally able to raise real property taxes. This is the reason that the taxes in Yonkers are one of the lowest in Westchester County.

The City insisted that it had a financial inability to pay. Its dependent school status, the inequitable amount of State Aid received, the fact that it is at its constitutional tax limitation and that it has a low property base all contribute to the fact that the financial outlook in Yonkers is not rosy.

The Panel has studied with great detail all the information provided us concerning the City's financial situation. We have paid particular attention to the expert testimony of Edward Fennell, the Union's financial expert and to Theodore Garofalo, the City's financial expert.

While we are persuaded that the financial situation of the City is troublesome, we do believe that the City can afford to pay the employees in the Coalition a reasonable increase in regard to the fringe benefit payment. Our conclusion is based, in large measure, on the realization that new taxes must be authorized. Two City Managers understood this. Both Pat Ravo and Eugene Fox recommended the institution of tax increases in recent years. The City Council failed to act upon these recommendations. Had the City adopted these recommendations, the evidence indicates that the City would not be facing a deficit for fiscal year 1980-81.

Our conclusion that the City has the ability to pay the monies awarded below is also based on our understanding that the City will be receiving monies from the employees represented by the Coalition as a result of the work stoppage in mid-April, 1981. It would be patently absurd for the Panel

to not consider these monies when determining an appropriate increase, if any, in the fringe benefit payment.

There has also been considerable evidence that the City's share of State Aid is inadequate. In fact, this appears to be about the only issue that the parties' are in complete agreement. Even a cursory view of the State Aid formula indicates that Yonkers has not fared as well as other cities in the so called "Big 5". We note with great interest that the level of aid received by Buffalo would be sufficient to wipe out even the most pessimistic projections for a deficit in fiscal year 1981-82.

However, given the express language of the Budget Act, anticipated revenues that are not certifiable cannot be included in the budget. They are not an appropriate factor in determining the ability to pay. For this reason, our conclusion below is not based, in any way, upon projections for increased aid. Rather, as indicated above, our determination follows from our view for the need and reasonableness of increased taxes and the monies that will return to the City as the result of the work action in April 1981. In summary, we believe that the City has the financial wherewithal/ to pay the increases awarded below.

Other Statutory Criteria

Besides the issues of comparability and the City's ability to pay, the Panel has also considered other factors in reaching our determination. Specifically, we have analyzed

the figures introduced on cost of living, the hazards of each of the job functions, educational requirements of the job, job training and skills and the standard of living of each of the employees represented by the Coalition over a period of years. In the interest of expedition, the Panel has determined not to go through each of these factors for each of the four Unions. Suffice it to say, that over twenty different exhibits were introduced at the hearing on these issues. These criteria as well as comparability and ability to pay, formed the fundamental basis for the determinations we have made below.

The Issues

A few introductory remarks seem appropriate. First, our Award deals solely with the area of fringe benefits. We have not intended to address any other issue in the respect of Agreements. That is, any agreements that the parties have reached in the past remain unchanged by our Award. Similarly, any disagreements as to prior agreements between the parties remain unresolved. This Award does not purport to impact on those agreements or disagreements.

Second, the salary increase agreed to by the City and the Coalition on September 3, 1980, is also unchanged by our Award. As far as the Panel is concerned, those increases shall be paid in conformance with the agreement worked out between the parties on September 3, 1980.

Third, the Panel feels compelled to comment about the parties' presentations to this Panel. Despite the almost

impossible time constraints placed upon the respective advocates, the presentations were all quite thorough and quite convincing. Our Award was made most difficult by the quality of the evidence and arguments introduced. We commend all of the parties for their succinct and efficient presentations.

Finally, we must note that our Award below is based, more than on any other factor, upon the equities of the situation. That is, despite the City's financial difficulties - which were so crystallized by the presentation of the City - we believe that a reasonable adjustment in the fringe benefit payment is required. Stated simply, the cost of continuing fringe benefits at a level that is similar to that previously enjoyed by the employees represented by the Coalition requires a substantial and across-the-board increase. It is only because of the compelling case made by the City that we have awarded but \$665.00.

In the same regard, the City's demands for "give-backs" was also somewhat compelling. While we have awarded few of the City's demands, our determination is not based on a conclusion that the others are without merit. Instead, we believe that the time is not appropriate for such "give-backs" and that any change in the others are best left to the parties to resolve during the process of collective negotiations.

COALITION

1. Local 456, I.B.T.

Local 456 demanded that the Supplemental Payment received by each of its members be increased by \$300.00. The current Supplemental Pay for members of Local 456 is \$550.00. This compares with the Supplemental Payment of \$1204.00 to the members of the Captains, Lieutenants and Sergeants Association and \$1204.00 to the members of the U.F.O.A. We believe that Local 456's demand is not unreasonable. Given the erosion of purchasing power caused by the ravages of inflation, we are convinced that an increase in the Supplemental Payment of \$300.00 is appropriate. For this reason, we shall increase the Supplemental Payment \$300.00 effective July 1, 1981.

Local 456 also asked for an increased payment to the Welfare Fund of \$580.00. These Welfare Funds (Variable Benefit Fund for the U.F.O.A.) in the City are administered solely by each union. That is, the City simply transmits the money to the union and the union determines what benefits to buy its membership with those monies.

In the case of Local 456's Welfare Fund, each employee currently receives \$400.00 per year. In previous years this fund has been used to buy disability benefits for the membership. In January 1981, a Severance Fund providing \$100.00 per man per year up to a maximum of 25 years was purchased. Testimony indicated that the fund was approximately \$300,000 in debt at this time.

While we are persuaded by the City's argument that the choice of benefits is totally up to the particular union, we must, in making our determination, analyze the extent to which the fringe benefit payment provides the type of coverage that is consistent with coverage in prior years.

In all, we are persuaded that the City's contribution to the Welfare Fund operated by Local 456 should be increased by a total of \$355.00. This will give Local 456 a total of \$655.00 per employee - the same increase that is to be provided to each of the Unions in the Coalition. We do not believe that Local 456's demand for \$580.00 is warranted.

2. Local 628 I.A.F.F.

The firefighters proposed that the uniform allowance, currently \$300.00, be increased to \$500.00. It introduced considerable evidence indicating the increased costs of purchasing and cleaning the necessary uniforms and clothing. Specifically, it introduced statistics as to the cost of purchasing protective clothing, dress uniforms and work uniforms. In addition, it introduced considerable documentation as to cost of cleaning dress uniforms and work uniforms.

After analyzing all this evidence, we are persuaded that the firefighters's demand for a \$200.00 increase in uniform allowance is warranted. Our determination here is based on the extraordinary increases in the price of purchasing and cleaning uniforms. We note that based on the evidence that even a \$200.00 increase will not completely compensate an

officer for the cost of purchasing and cleaning uniforms. We also note that the New York City Fire Officers also had their uniform allowance increased by \$200.00 during their recent round of negotiations.

Local 628 also seeks an increase of \$680.00 in Supplemental Payment. The current Supplemental Payment for firefighters is \$517.00. This is the lowest of the four unions in the Coalition. In fact, even if the entire proposal regarding Supplemental Pay was granted, firefighters would still receive less than the \$1204.00 enjoyed by the U.F.O.A. and police superior officers.

Thus, we are convinced that the members of Local 628 are entitled to a substantial increase in Supplemental Pay. For this reason, we will increase the Supplemental Payment effective July 1, 1981, a total of \$455.00.

3. Uniform Fire Officers's Association

The U.F.O.A. has proposed that their Variable Benefit Fund, which is the equivalent of a Welfare Fund, be increased a total of \$150.00. This would be an increase from the current fund of \$450.00.

The benefit now supplied by the U.F.O.A. is a self-insured Dental Plan. In order to maintain this plan, an increase in the amount paid into the Variable Benefit Fund is necessary. This is because of the increases in the costs of silver and gold which are both essential to dentistry. These increased costs have resulted in a deficit for the first quarter of 1981.

After analyzing the arguments presented on both sides of this issue, we are persuaded that an increase of \$150.00 to the Variable Benefit Fund is reasonable. As such, we shall award, effective July 1, 1981, an increase of \$150.00 to the Variable Benefit Fund.

The U.F.O.A., like the firefighters, requested an increase of \$200.00 to the uniform allowance. Like the firefighters, the current uniform allowance is \$300.00. We believe that the same arguments that we found compelling when presented by Local 628, are convincing here. The increased costs of purchasing and cleaning uniforms are legend. For this reason, the uniform allowance, effective July 1, 1981, will be increased by \$200.00.

Finally, the U.F.O.A. asked for an increase of \$530.00 in the Supplemental Pay. The current Supplemental Pay is \$1204.00.

The basic argument presented by the U.F.O.A. in support of its demand, was the problem of the loss of spendable income. Special attention was addressed to the issue of F.I.C.A. payments. F.I.C.A. was used as an example of after-tax loss of income comparing it to Supplemental Payments for previous calendar years. The U.F.O.A. used F.I.C.A. payments solely to show that Supplemental Payment had not kept pace with the increases in F.I.C.A. payments. In this regard, they note a difference between F.I.C.A. and Supplemental Payments of \$383.00

in 1979 and 1980. If Supplemental Payment was not increased, the difference would now be \$771.05.

We believe that an increase in Supplemental Payment is appropriate. In order to give the members of the U.F.O.A. the full measure of a \$655.00 increase in fringe benefit payments, effective July 1, 1981, the Supplemental Payment shall be increased by \$305.00.

4. Captains, Lieutenants and Sergeants Association

The superior officers demanded an increase of \$380.00 in the Welfare Fund. The current contribution is \$335.00 per man per year. It must be noted that while the superior officers have the right to have their own separate welfare fund, they are currently part of the entire P.B.A. Welfare Fund.

The Welfare Fund currently provides optical, dental and life insurance. Roy W. Mordhorst, Dental Administrator, testified that over \$188.00 is necessary in order to provide the intended dental program. An additional \$200.00 is necessary for optical and life insurance.

While we again agreed with the City that the choice of benefits is exclusively up to the unions, we are persuaded that the superior officers demand for \$380.00 is not unreasonable. It is in line with the cost increases and benefit levels provided to the other units. For this reason, effective July 1, 1981, the welfare payment shall be increased by \$380.00.

The superior officers also requested an increase of \$120.00 to their uniform allowance. The evidence indicated that

the uniform allowance for police superior officers has remained at \$300.00 since July 1977. Given the increased costs of purchasing and cleaning uniforms, we believe that an increase in this area is also warranted. Given the priorities testified to by members of this Union, we will award \$120.00 to the uniform allowance. That is, effective July 1, 1981, the uniform allowance shall be increased by \$120.00.

Finally, the superior officers have requested an increase in their Supplemental Payment. The current Supplemental Payment is \$1204.00. In order to give these officers the full measure of a \$665.00 increase, we will increase the Supplemental Payment, effective July 1, 1981, by \$150.00.

CITY

1. Work Schedule

The City demanded that the work schedule worked by the employees in each of the four units be increased. For Local 628 and the Captains, Lieutenants and Sergeants Association, the City requested a return to the January 1, 1979 schedule. The City sought to change the hours per week for Local 456 and the U.F.O.A. The City introduced considerable evidence as to the cost impact of the work schedules in operation.

We believe that the City has failed to make a compelling case for the need to change the work schedule. It is our view

that it would be inappropriate for the Panel to change the work schedule during an interest arbitration primarily addressing the issue of fringe benefits. For this reason, we shall reject the City's demand.

2. Rate of Pay

For the Captains, Lieutenants and Sergeants Association, Local 628 and the U.F.O.A., the City sought to have the annual salary base not include longevity. It also demanded that the daily rate of pay be computed on a basis of 1/260 of annual salary base and that the hourly rate of pay be computed as 1/2080 of annual salary base. Currently, longevity is included in the annual base salary. The hourly rate is now computed on 1/1856 of an individual's annual base salary and the daily rate of pay is computed as 1/232 of the individual's annual base salary.

We do not believe that the City has introduced a persuasive argument, at this time, to change the rate of pay. While the costs involved with computing the rate of pay in its present form are obvious, we are constrained to conclude that the time is not appropriate to change the computation of the rate of pay.

3. Longevity

The City sought to have longevity discontinued in all four Agreements. It proposed that longevity payments currently received by members be grandfathered and shall continue to be paid in the sum now being paid to members as longevity payment for the duration of this agreement.

Again, we believe that it would be inappropriate for this Panel to change the longevity payment. There is simply insufficient evidence to warrant an alteration of the current practice.

4. Call-Back Pay

The City sought changes in the call-back pay (recall pay) in Local 456, Local 628 and the Captains, Lieutenants and Sergeants Association Agreements. The evidence introduced simply does not warrant a change in the call-back pay provision at this time. For this reason, we shall reject the City's proposal.

5. Overtime

The City sought a change in the overtime provision in all the Agreements except that of Local 456. Specifically, the City demanded that overtime work is to be paid when earned instead of being put on the books for deferred payment or use at a future time as compensatory time. The City also argued that time paid as sick leave not be treated as time worked for the purpose of calculating overtime. It also proposed other changes in the respective overtime provisions.

At this time, we are convinced that a change in the overtime provisions would be improper. As such, we will reject the City's demand.

6. Out-of-Title Pay

The City requested that the U.F.O.A. and Local 628 Agreements be rewritten to require that an officer actually occupy the higher rank and must work in such rank a minimum of four (4) hours to qualify for out-of-title pay. This would be a change from the present language which requires an officer to work out-of-title for but two (2) hours in order to be eligible for out-of-title pay.

Both Unions argued that the City's demand would impact dramatically on the compensation level of officers. They were against any changes in the provision.

We agree with the City that the provision, insofar as Local 628 is involved, needs to be changed. We feel that a four (4) hour minimum is logical and appropriate for firefighters. Thus, we will grant the proposal as far as Local 628 is concerned.

7. Personal Leave

The City sought to have the definition of personal leave changed in all four contracts. We see no reason to change the current language at this time.

8. Grievance Procedure

The City proposed to have steps included in the grievance procedure to allow it to file grievances. Fundamental labor relations principles establish that an employer has the right to

administer an agreement. It is the Union's responsibility to police that agreement. For this reason, we see no basis for the City needing the right to institute a grievance.

9. Zipper Clause

The City demanded that a Zipper Clause which would waive the Unions's rights to bargain over terms and conditions during the life of the Agreements be included in the Agreement. This provision might also impact upon certain statutory rights.

While a Zipper Clause is not unusual in collective bargaining agreements, we believe that such a clause should be bilaterally agreed to. It should not be unilaterally imposed by an interest arbitration panel. For this reason, we shall reject the City's proposal.

10. No Strike Affirmation

We do not view it to be necessary for us to place the Taylor Law's no strike guarantee into the Agreements.

11. Maternity Leave

Maternity leave is now covered by statutory and case law. As such, we will deny this proposal.

12. Night Differential

The City sought a series of changes in the night differential area. Many of these proposals are complex; many involve restructuring the entire procedure.

We believe that the time is not ripe for any such changes. If the parties wish to alter the historic method of calculating and paying night differential, it can be addressed at the negotiating table. We do not feel that it is appropriate for us to "tinker" with the provision.

13. Court Time

The City proposed that the three (3) hour minimum on Court time, for the superior officers, only be paid if it "does not become an extension of the beginning or end of a normal tour." The City has failed to make a compelling case to change this provision.

14. Training Time

The City argued that the superior officers should be required to attend five (5) training days per year during off duty hours without any additional compensation. This proposal would be an increase from the current practice which the City stated was approximately four (4) days.

There is no record evidence indicating that the current training time is inadequate. Therefore, we will reject this demand.

15. Association Activities

The City introduced involved proposals to revamp association time off and association rights of the superior officers

the U.F.O.A and Local 628. The City's proposal would completely revamp the Association Activities Articles.

We are persuaded by the City that a change in this area is necessary in the U.F.O.A. and Captains, Lieutenants and Sergeants Agreements. We do not believe that any change in Local 628's provision is necessary.

Under both the superior officers's and U.F.O.A. Agreements, delegates to conventions, seminars and regional meetings shall be entitled to a maximum of twenty (20) days per year with pay. The City Manager may grant exceptions to the twenty (20) day limit.

Under the terms of the U.F.O.A. Agreements, fourteen (14) elected members of the Association are eligible for twenty (20) days each. This is a total of two hundred and eighty (280) days.

Under the terms of the Captains, Lieutenants and Sergeants Agreement, twelve (12) elected members of the Association are eligible for twenty (20) days each. This is a total of two hundred and forty (240) days.

We believe that this is potentially an extreme amount of time off for seminars or meetings. While we recognize the Unions's arguments that they have fought for many years to attain this benefit, we nevertheless believe that a reduction is necessary. For this reason, both Agreements shall be modified to indicate

that only eight (8) delegates are eligible for twenty (20) days each. This is a total of one hundred and sixty (160) days per unit.

The Panel is aware of the magnitude of the potential savings to the City in terms of both money and productivity when two hundred (200) union days are eliminated. We also understand the impact on the Unions. However, we must conclude that the City's position is both reasonable and justifiable. As such, we believe that the change ordered is warranted.

16. Medical Examination Program

The City demanded that the day off with pay shall be deleted from the Medical Examination Program enjoyed by Local 628. We see no reason to award such a change.

17. Mutual Swap

The City proposed that mutual swaps between superior officers be permitted only between officers of equal ranks. It wished to preclude lieutenants from swapping with captains, sergeants with lieutenants, etc.

The City was unable to demonstrate exactly what the cost implications were of the present system. Moreover, we are uncertain whether the system provides an unfair advantage to any officer. Thus, we will reject this demand.

AWARD

The Public Arbitration Panel designated by the New York Public Employment Relations Board, pursuant to Section 209.4 of the New York State Civil Service Law, to determine the outstanding fringe benefit issues between the City of Yonkers and the Yonkers Municipal Unions's Coalition hereby makes the following Award. Effective July 1, 1981, the payment for the following fringe benefits shall be increased as follows:

A. 1. Local #456, I.B.T.

Supplemental Payment increased by	\$300.00
Welfare Payment increased by	355.00
	<u>\$655.00</u>

2. Local #628, I.A.F.F.

Uniform Allowance increased by	\$200.00
Supplemental Payment increased by	455.00
	<u>\$655.00</u>

3. Uniform Fire Officer's Association

Variable Benefit Fund increased by	\$150.00
Uniform Allowance increased by	200.00
Supplemental Payment increased by	305.00
	<u>\$655.00</u>

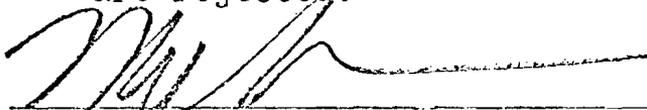
4. Captains, Lieutenants and Sergeants Association

Welfare Fund increased by	\$380.00
Uniform Allowance increased by	125.00
Supplemental Payment increased by	150.00
	<u>\$655.00</u>

B. Article II, Section 7 of the Agreement between the City and Local 628 - I.A.F.F. shall be amended to indicate that the member must actually occupy the higher rank and must work in such rank a minimum of four (4) hours to qualify for out-of-title pay. If a certified Civil

Service list for Lieutenant is established, members will first be selected for out-of-title assignments based on such list.

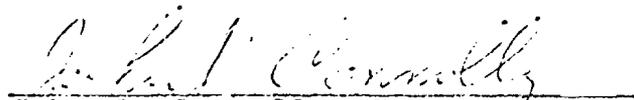
- C. The 1978-80 Agreement between the City and the Uniform Fire Officer's Association shall be changed regarding Association Leave. Paragraph 10 shall now read, "It is understood that delegates referred to above are limited to eight (8) elected members of the Association." In all other aspects the provision is unchanged.
- D. The last sentence in Article II, Association Activities, Section 1 B paragraph of the Agreement between the City and the Yonkers Captains, Lieutenants and Sergeants Association shall now read, "It is understood that delegates referred to above are limited to eight (8) elected members of the Association's Executive Board and Board of Trustees." In all other aspects the provision is unchanged.
- E. To the extent that the parties have stipulated in paragraph 2 of the Mediators's proposal, which serves as the stipulation to the Panel, the agreement of September 3, 1980, is hereby incorporated into this Award.
- F. All other demands submitted by the City and the Coalition are rejected.



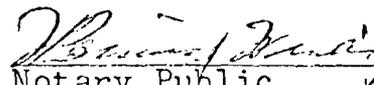
 Martin F. Scheinman, Esq., Chairman

STATE OF NEW YORK)
 COUNTY OF Queens) ss.

On this 17th day of May, 1981, before me personally came and appeared Martin F. Scheinman, to me known and known to me to be the individual described in and whol executed the foregoing instrument and he acknowledged to me that he executed the same.



 John J. Connolly, Esq.
 Union Panel Member

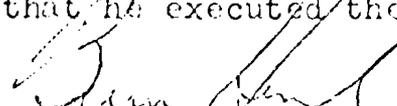


 Notary Public
 H. BERNARD WEINBERG
 NOTARY PUBLIC, State of New York
 No. 41-4505175
 Qualified in Queens County
 Commission Expires March 30, 1983

STATE OF NEW YORK)
 COUNTY OF Queens) ss.

On this 1st day of May, 1981, before me personally came and appeared John J. Connolly, 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
 Commission Expires 1983-30



 Notary Public

I respectfully dissent from
the award of the Panel and
reserve the right to issue a dissenting opinion.

Bruce E. Tolbert, Esq.

Bruce E. Tolbert, Esq.
Employer Panel Member

STATE OF NEW YORK)
City of Yonkers) ss.
COUNTY OF Westch.)

On this 13th day of May, 1981, before me personally
came and appeared Bruce E. Tolbert, 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.

Annette Sheff
NOTARY PUBLIC
ANNETTE SHEFF
Commissioner of Deeds
City of Yonkers, N. Y.
Commission Expires Dec. 31, 1982

Dissenting Opinion by Bruce E. Tolbert

I was appointed as a member of this interest arbitration panel by the City Manager of Yonkers as the employer member of the panel which was duly constituted, by agreement of the parties, pursuant to the Taylor Law (Civil Service Law Section 201, et seq. Since the interest arbitration section of the Taylor Law applies only to Police and Fire unions, any reference herein to the Teamster's Union or their representative is merely factual). That agreement was reached because of an impasse in negotiations for a new contract to replace a contract which had expired on June 30, 1980, which impasse resulted in a strike that lasted about forty-eight (48) hours on April 16 and 17, 1981. The agreement resolving that impasse and strike, in addition to submitting the matters at issue to binding arbitration, also required an expeditious decision. As a result, the hearing was confined to two (2) days of testimony (April 24 and 25), at which documentary evidence was also introduced, in the absence of a Court Reporter.

The parties to the arbitration were the City of Yonkers ("employer") and Local 456 of the International Brotherhood of Teamsters, Local 628 of the International Association of Firefighters, the Police Captains, Lieutenants and Sergeants Association and the Uniformed Fire Officers Association ("coalition"). In addition to my presence on the panel as representing the employer, John Connelly, Esq., represented the coalition employees and Martin Scheiman, Esq., was appointed as the public member and Chairman of the Panel by consent of the employer and coalition. At the hearing, the employer appeared by Irving T. Bergman, Esq., and the coalition by

Firstly, the parties signed an agreement on September 3, 1980 which provided for a four percent (4%) increase on the individual employee's base salary on June 30, 1980 effective July 1, 1980; an additional four percent (4%)

on the same base effective January 1, 1981 and an additional five percent (5%) effective July 1, 1981 on the individual employee's base salary on June 30, 1981. This agreement was for an eighteen (18) month contract expiring December 31, 1981 and was contingent upon the parties agreeing upon all other terms and conditions of employment.

This failure to agree on all other terms and conditions of employment ("fringe benefits") made the September 3, 1980 settlement effectively non-existent, at least as far as this coalition is concerned. The employer, however, never reneged on this portion of the agreement; nor does it now. I concur with that portion of this panel's award which grants the coalition 4%, 4% and 5%.

With that out of the way, I must address the employer's real concern, which is the fringe benefits. (Parenthetically, I must state that the employer and coalition have agreed that the fringe benefits granted by this panel will not be effective until the City's next fiscal year which begins July 1, 1981.) Fringe benefits to the extent of six hundred fifty-five dollars (\$655), are beyond the City's present ability to pay. I considered the testimony of the coalition's expert, Edward G. Fennell, and I was not persuaded. Despite Mr. Fennell's credentials, he was called in at the last minute, obviously, and from his testimony, it was equally evident that he doesn't know Yonkers, nor its Fiscal Agent ("Budget") Act nor its two percent (2%) New York State Constitutional real property tax limitation. On the contrary, I find the testimony of the employer's witnesses much more credible. I, therefore, dissent from the award of six hundred fifty-five dollars (\$655) per employee in fringe benefits.

To the extent that the majority opinion does take cognizance of the City's financial condition and does attempt to set parameters for negotiations for a new contract, I concur with it.

Michael E. Solbert, Esq.
Employee Representative

