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In the Matter of the Compulsory Interest Arbitration between

THE CITY OF NIAGARA FALLS

AND

NIAGARA FALLS UNIFORMED FIRE FIGHTERS ASSOCIATION, LOCAL 714

NYS PERB Case No. IA86-8, M85-495  
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BEFORE: DAVID C. RANGLES, Neutral Chairman  
DAVID C. FABRIZIO, Employer Member  
JOHN P. SHIAH, Employee Member

APPEARANCES:

For the City:

PETER F. COMERFORD, Deputy Corporation Counsel  
LYNNE MC DOUGALL, Personnel Department  
PATRICIA C. LENHART, Finance Department  
CARMEN T. MORREALE, Deputy Fire Chief

For the Association:

BERNARD E. STACK, ESQ.  
WILLIAM E. WOODCOCK, JR.  
JAMES J. VENTRILLA  
RICHARD FROMMENT

STATEMENT:

The above captioned parties have been unable to successfully negotiate a successor to the 1984-1985 collective bargaining agreement. The resultant impasse in negotiations, therefore, has been referred to Compulsory Interest Arbitration pursuant to the provisions of Article 14, Section 209.4 of the New York State Civil Service Law. Subsequently, the duly designated undersigned Public Arbitration Panel convened hearings on October 23 and 31, 1986 at the Niagara Falls Public Library, Niagara Falls, NY. At those times and place full and complete opportunity was afforded for the presentation of evidence and proof

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and for the examination and cross-examination of witnesses. Subsequent to the hearings post-hearing submissions were received and the record was closed.

At the hearing on October 23rd, the parties stipulated the following issues for decision.<sup>1/</sup>

STIPULATION:

Dated: October 23, 1986

The following issues are at impasse for the contract years 1986 and 1987. All other issues are resolved.

1. Salary Increase
2. Grade 4 - Upgrade
3. Clothing Allowance
4. 911 Fire Operators
5. Special Projects

ss/Peter F. Comerford  
For the City

ss/Bernard E. Stack  
For the Association

At the hearing on October 30th, that stipulation was modified by a stipulation of withdrawal of issues at impasse.

STIPULATION:

Dated: October 30, 1986

By this instrument the issues Grade 4 Upgrade and Special Projects are withdrawn. The status quo shall continue in regard to them.

ss/Peter F. Comerford  
For the City

ss/Bernard E. Stack  
For the Association

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<sup>1/</sup> The Association notes that if the panel should award an increase for 1986 which would be payable throughout the year 1987, fire fighters who retire in 1987 should receive a lump sum during the last month of their employment for that portion of the increase for 1986 which was deferred for 1987 and which they have not as yet received.

Remaining, therefore, for panel determination for the 1986-1987 collective bargaining agreement are the issues of salary increase, clothing allowance and 911 fire operators.

The proposals of the parties in regard to those issues which are economic in nature are as follows:

**ASSOCIATION PROPOSALS**

**Salary:** A. 6% across the board salary increase for 1986 retroactive to January 1, 1986

B. 6% across the board salary increase for 1987

**Clothing Allowance:**

Establish a clothing allowance of \$240.00

**911 Fire Operators:**

These personnel should receive those benefits of the police contract which are superior to those contained in the fire fighters' contract.

**THE CITY PROPOSALS**

**Salary:**

A six (6) percent salary increase as of January 1, 1987, rolled back to October 1, 1986, and payable in 1987.

**Uniform allowance and 911 Operators:**

The City totally disapproves these Association proposals.

**Costing of these Proposals for a two year agreement**

	Association	City
Salary - 1986	6.0%	}7.5%
1987	6.0%	
Clothing allowance		
1987 <sup>2/</sup>	1.03%	
911 Operators <sup>2/</sup>	-	
	<u>13.03%</u>	<u>7.5%</u>

In its consideration and disposition of the issues before it, the panel based its findings on the criteria set forth in the statutory provisions applicable to Compulsory Interest Arbitration, Article 74 CSL, §209.4 (v)(c):

"(v) the public arbitration panel shall make a just and reasonable determination of the matter 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:

- 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"

**PROOFS AND CONTENTIONS OF THE PARTIES**

The City of Niagara Falls is a New York state municipality with a population of approximately 70,000. It employs the customary personnel to manage, maintain and protect its corporate and real structure. Within that employ is a certified bargaining unit of some one hundred sixteen (116) fire fighters represented by the Association.

2/ This proposal is without discernible cost.

The Association exhibited that its salaries are significantly below the salaries paid fire fighters in the twelve (12) other cities it deems comparable. Moreover, even in comparison with the City's comparables, it ranks 9th out of 16.

Turning to the City's ability to pay, the Association relies upon certain stipulated facts upon which to claim that its proposal for a 6% raise in the year 1986 costing \$161,478.00 is justifiable. The City has experienced an unanticipated cash income for 1986:

1. \$578,973 savings in 1986 retirement costs
2. \$900,000 unbudgeted settlement in library litigation
3. \$800,000 unanticipated revenues from sales tax
4. \$73,000 unallocated contingency account

Further revenue capabilities may be realized from \$1,200,000 uncollected tax arrears. Apparently, these factors were the basis of a news release of September 23, 1986 wherein the City Comptroller stated that the City no longer has a cash flow problem and would finish 1986 in the "black".

In regard to the clothing allowance proposal, the range of payments in the municipalities exhibited by the Association were from \$170 - \$500. In the majority of them the City provided the initial issue of clothing and the annual allowance appeared to be for replacement or care of uniforms.

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The Association believes that the Fire 911 operators who work alongside Police 911 operators and who do the same work should be entitled to any benefits that the police enjoy that are not encompassed within the fire fighters' contract.

Certainly, fire fighters being engaged in the most hazardous of public sector employment must receive a reasonable and fair salary which the Association believes is encompassed by its proposal.

The City in defense of the propriety of its salary offer and in opposition to the Association proposals requests the panel to consider the following facts and arguments.

The offer is comparable to that which was offered and accepted by other City employees. It believes that the salary of a Niagara Falls fire fighter is consistent with that of all other City employees. In fact, their salaries are even higher than police salaries. Each union representing City employees has been offered a six (6) percent salary increase January 1, 1987, rolled back to October 1, 1986, but payable in 1987. That offer was the basis of settlement with a unit of building trades employees and the police supervisory unit of twenty-three (23) employees which also received a schedule change costing approximately 4% paid retroactive to January 1, 1986.

	1985 Fire Fighters	1986 Police
Beginning salary	\$21,456	\$20,907
2nd step	21,959	21,399
3rd step	22,323	21,751

In fact, with overtime, the actual dollars paid the average fire fighter amounts to over \$27,000 in annual wages.

The additional proposal for a clothing allowance is without justification except for a "desire to put more cash into the pockets of the pants for which the City already pays". The City notes that it already provides such an allowance for Fire Prevention personnel.

Turning to the Association proposal to grant the 911 fire operators any benefits that are exceeded by the police contract, the City argues that said personnel may not have the luxury of the best of both contracts, and, accordingly, it resists this Association proposal.

**OPINION AND AWARD**

**Salary:** In addressing the statutory criteria, we believe it is necessary to maintain an economic equality of settlement for the Association with the only comparable unit of City employees, the unit of police supervisory personnel. While the police received no salary increase for 1986, their effective salary increase for 1986 and 1987 was 7.5%. That amount must be increased by 4% due to the cost of the negotiated schedule change, thus, the total cost to the City over the two years is 11.5%.

Such an amount is essentially consistent with the percentage increases received by those fire departments exhibited by the City.<sup>3/</sup> That exhibit lists 12 municipalities which negotiated an average increase of 5.6% for 1986 and 6 municipalities which negotiated an average increase of 5.65% for 1987. Thus, over two years, those increases totaled 11.26%.

The City was unable to offer convincing evidence that it did not have the ability to provide the revenue to reach that arena of settlement. It did, however, allude to the potential drain on its resources for a contemplated waste water treatment plant and the ongoing underwriting of the existing convention center, Rainbow Mall and Winter Garden. Those impediments to revenue resources, however, were countered by the Association which noted that many of the costs relative thereto were recoverable.

On those factors we deem that the appropriate salary increase be 5% in each of the years 1986 and 1987. Specifically, the 1985 salary schedule shall be increased across-the-board by 5% for 1986 and by an additional 5% for 1987 both of which shall be payable during the year 1987.<sup>4/</sup> There shall be no lump sum retroactive payment for 1986.

3/ NYS Dept. of Labor Agreements Data Systems (LADS) - Fire contracts over 30,000 population excluding NYC Metro area for City of Niagara Falls - Oct. 20, 1986 (City Ex. 6).

4/ Retirees shall be compensated in accordance with footnote 1, supra.

**Clothing Allowance:** Of the fifteen (15) fire departments exhibited by the City in the LADS report, eight (8) departments provided a cash payment for uniform care and replacement after the original issue averaging \$332.00 per annum. In order to sustain this proposal beginning in 1987, we would need to add approximately \$24,000, or .9%, to the cost of the settlement. Together with the salary increase of 10%, the total economic impact of this award would be 10.9%, an amount significantly less than the average negotiated for salaries as evidenced in the LADS report (11.26%) or by the Niagara Falls Police (11.5%). Accordingly, each member of the bargaining unit except Fire Prevention personnel shall receive an annual uniform allowance of \$240.00. Recognizing the concern of the City for cash flow, we determine that in 1987 the clothing allowance shall be divided so that \$120.00 is paid as soon as practicable after the issuance of the award and \$120.00 paid during July. In the years thereafter it shall be paid in total during the month of January.

**911 Operators:** This proposal of the Association may not be sustained. Since these employees will receive a salary increase that is more beneficial than that of police officers, they may not seek to enjoy benefits obtained by them which are not terms and conditions of employment successfully negotiated for the unit of employees of which they are a part. To find otherwise would be prejudicial to the majority of employees in both bargaining units, police and fire fighters.

Now, therefore, in accordance with the foregoing application, it is, and hereby is, ordered and awarded that:

1. The 1985 agreement shall be carried forward for the years 1986 and 1987 except as modified by the terms hereunder and by prior agreements of the parties.

2. Salaries

A. For the year 1986, the 1985 salary schedule shall be increased by 5% across the board.

B. For the year 1987, the 1986 salary schedule shall be increased by 5% across the board.

C. Both the 1986 and 1987 salary increases shall be paid during the calendar year 1987 divided equally in each of the payroll periods therein. There shall be no lump sum retroactive payment for 1986.

3. Uniform Allowance

Beginning in 1987, each unit member except Fire Prevention personnel shall receive a \$240.00 uniform allowance according to the procedure detailed herein.

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This award constitutes the entire settlement of all issues before the Compulsory Interest Arbitration Panel. Any issues not addressed in this award are denied.

Dated: 12/29/86

*David C. Randles*  
DAVID C. RANDLES  
Chairman and Neutral Public Member

State of New York )  
County of *Saratoga* ) SS:

On this *29<sup>th</sup>* day of *December*, 1986, before me personally came and appeared DAVID C. RANDLES 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.  
*Mary Patricia Randles*

Dated: *Dec. 15, 1986*

*David G. Fabrizio*  
DAVID G. FABRIZIO  
Employer Panel member  
~~CONCUR~~ **DISSENT** *DGF*

State of New York )  
County of *ERIE* ) SS:

On this *15<sup>th</sup>* day of *December*, 1986, before me personally came and appeared DAVID C. FABRIZIO 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.

*David C. Randles, Neutral Public Member*  
State of NY Saratoga Cnty  
#4512412 Exp 3-30-87

Dated: 12-15-86

*John P. Shiah*  
JOHN P. SHIAH  
Employee Panel member  
~~CONCUR~~ **DISSENT**

State of New York )  
County of *Albany* ) SS:

On this *15<sup>th</sup>* day of *December*, 1986, before me personally came and appeared JOHN P. SHIAH 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.

*David C. Randles*