

NYS PUBLIC EMPLOYMENT RELATIONS BOARD
RECEIVED

NOV 18 1991

CONCILIATION

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

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:
In The Matter of The
Interest Arbitration
:
Between
:
CITY OF WHITE PLAINS
:
and "City"
:
LOCAL 274, INTERNATIONAL ASSOCIATION
OF FIREFIGHTERS, AFL-CIO, CLC
:
"Union"
:
-----X

PERB CASE NOS.
IA 89-033;
M 89-183 & 184

Firefighters and
Fire Lieutenants'
Unit

APPEARANCES:

For the City

RAINS & POGREBIN, P.C.
Richard Zuckerman, Esq.
Stephen Kaluczky, Personnel Officer

For the Union

GLEASON, DUNN, WALSH & O'SHEA, ESQS.
Ronald G. Dunn, Esq., Attorney
Duncan MacRae, President
Timothy Ryan, Negotiating Team Member
Donald M. Herde, Negotiating Team Member

BEFORE:

Bertrand B. Pogrebin, Esq., City Panel Member
Thomas F. DeSoye, Esq., Union Panel Member
Howard C. Edelman, Esq., Panel Chairman

A W A R D

1. All terms and provisions of the 1987-89 Agreement shall remain in full force and effect, except as modified below.
2. The successor Agreement shall commence on July 1, 1989 and expire on June 30, 1991.
3. References in the successor Agreement to the prohibition of conducting training and/or inspections below or above certain temperature readings shall be deleted.
4. Wages rates contained in the Agreement shall be increased as follows:
 - Effective July 1, 1989 - 5.75%
 - Effective July 1, 1990 - 5.75%
5. Clothing Allowances shall be increased as follows:
 - Effective July 1, 1989 - \$50
 - Effective July 1, 1990 - \$50
6. Bargaining unit members hired by the City after June 28, 1991 shall be required to pay 25% of the cost of their health insurance premiums for the first five years of service with the City.
7. The phrase "any formal hearing or proceeding" in Article XXI(g) shall be changed to, "a Section 75 hearing, PERB proceeding, formal administrative proceeding involving Section 207-a of the General Municipal Law, and/or contract grievance proceeding, including arbitration. Add to the end

of the paragraph the following: "Nothing herein shall be construed to limit the Association's right, if any, to attend and participate in any Court proceeding."

8. Appended to this Award is a marked-up copy of a contract reflecting the changes awarded by the Panel and/or previously agreed to by the parties. The City is hereby directed to promptly retype the contract with these changes. The parties are further hereby directed to promptly execute said contract upon its presentation by the City to the Union.

9. All other proposals of the City and the Union are rejected.

DATED: *June 19, 1991*

Howard C. Edelman
HOWARD C. EDELMAN, ESQ.,
Panel Chairman

STATE OF NEW YORK)
) SS.:
COUNTY OF NASSAU)

Sworn to before me on this 19th day of June, 1991

PATRICIA D. RENDINE
Notary Public, State of New York
No. 4921671
Qualified in Nassau County
Commission Expires Feb. 22, 1992

Patricia D. Rendine
Notary Public

CONCUR BBS ✓

DISSENT _____

DATED: 6/20/91

Bertrand B. Pogrebin
BERTRAND B. POGREBIN, ESQ.
City Panel Member

STATE OF NEW YORK)
COUNTY OF NASSAU) SS.:

Sworn to before me on this 20th day of June, 1991

Regina L. Olsen
Notary Public

* * * *

REGINA L. OLSEN
Notary Public, State of New York
No. 30-4730341
Qualified in Nassau County
Commission Expires August 31, 1992

CONCUR _____
DISSENT TFD - dissenting opinion to
accompany majority
opinion.

DATED: 6/24/91

Thomas F. Desoye
THOMAS F. DESOYE, ESQ.
Union Panel Member

STATE OF NEW YORK)
COUNTY OF Westchester) SS.:

Sworn to before me this 24 day of June, 1991.

Donald P. Henry
Notary Public

DONALD P. HENRY
Notary Public, State of New York
No. 4975917
Qualified in Westchester County
Commission Expires December 28, 1992

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

-----X

In The Matter of The
Interest Arbitration

Between

CITY OF WHITE PLAINS

and

LOCAL 274, INTERNATIONAL ASSOCIATION
OF FIREFIGHTERS, AFL-CIO, CLC

"City"

"Union"

:

:

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:

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:

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:

-----X

PERB CASE NOS.
IA 89-033;
M 89-183 & 184

Deputy Chiefs' Unit

APPEARANCES:

For the City

RAINS & POGREBIN, P.C.
Richard Zuckerman, Esq.
Stephen Kaluczky, Personnel Officer

For the Union

GLEASON, DUNN, WALSH & O'SHEA, ESQS.
Ronald G. Dunn, Esq., Attorney
Duncan MacRae, President
Timothy Ryan, Negotiating Team Member
Donald M. Herde, Negotiating Team Member

BEFORE:

Bertrand B. Pogrebin, Esq., City Panel Member
Thomas F. DeSoye, Esq., Union Panel Member
Howard C. Edelman, Esq., Panel Chairman

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

NOV 12 1991

-----X **CONCILIATION**

In the Matter of the Interest Arbitration :

-between-	:	
CITY OF WHITE PLAINS,	:	PERB CASE NOS.
	:	IA-89-033;
	:	M89-183 & 184
"City"	:	Firefighters
	:	and Fire
-and-	:	Lieutenants
LOCAL 274, INTERNATIONAL ASSOCIATION	:	Unit;
OF FIREFIGHTERS, AFL-CIO, CLC	:	Deputy Chiefs
	:	Unit
"Union"	:	

-----X

APPEARANCES

For the City

RAINS & POGREBIN, P.C.
Richard Zuckerman, Esq., of Counsel
Stephen Kaluczky, Personnel Officer

For the Union

GLEASON, DUNN, WALSH & O'SHEA, ESQS.
Ronald G. Dunn, Esq., Attorney
Duncan MacRae, President
Timothy Ryan, Negotiating Team Member
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BEFORE: Bertrand B. Pogrebin, Esq., City Panel Member
Thomas F. DeSoye, Esq., Union Panel Member
Howard C. Edelman, Esq., Public Panel Member

BACKGROUND

The parties are signatories to two Agreements. One covers Firefighters and Fire Lieutenants; the other, Deputy Chiefs. Both Agreements expired on June 30, 1989.

Some time prior thereto, the parties entered into negotiations for successor Agreements. These proved unsuccessful, as were mediation efforts. Consequently, the Union sought compulsory interest arbitration. Pursuant to the rules and regulations of the Public Employment Relations Board (PERB), the undersigned Panel was constituted to hear and decide the dispute.

Hearings were held before us on February 5, 1991; February 25, 1991; and April 4, 1991. Thereafter, the Panel met in executive session. Awards covering the two units were issued on June 19, 1991. This Opinion follows.

OPEN ISSUES¹

1. Wages -

The Union seeks an increase of 10% or the rise in the Consumer Price Index plus 4%, whichever is higher, for each of two years. In support of this proposal it raises a

1. Unless otherwise indicated, all issues apply equally to both bargaining units.

number of arguments. Chief among these are the following claims:

- the City can well afford the increases sought by the Union. It (City) has an unused taxing ability of 22 million dollars; thus the City is well under its constitutional taxing limit
- the City's yearly budgets show substantial reserves: as of June 30, 1990, the City's fund balance was approximately fifteen million dollars
- the City has saved considerable sums of money in Fire and Police pension payments. In 1977, the City was paying 37% of wages as its pension contribution. For 1990-91, the comparable figure is 10.1%. (See testimony of E. Fennell; Union Exhibit 1).
- increases in Firefighter units in comparable jurisdictions have averaged over 6% for a comparable period. For example, New Rochelle Firefighters received 6% in salary, plus an added longevity step, increases in uniform allowance and other economic benefits. Similarly, Mount Vernon Firefighters got 6% in wage improvements, plus increased longevity.
- neither Mount Vernon nor New Rochelle Firefighters made major concessions. In fact, New Rochelle Firefighters won improvements in health premium contributions (Union Exhibits 20 and 22).

The Union acknowledges that the White Plains PBA received increases of 5.75% for each of two years. It also acknowledges that, under the PBA Agreement, newly hired Police Officers will have to pay 25% of their insurance premium for the first five years of their employment.

However, the Union insists, the Panel ought not to follow the PBA Agreement. This is so, it argues, because the wage increases contained therein fall far below those negotiated in other Westchester County fire units. In the Union's view, its right to independent negotiations would be destroyed were the Panel to impose the same economic modifications as those contained in the PBA Agreement. For these reasons, the Union asks that its wage proposal be adopted.

The City contends it cannot afford the wage increases granted the PBA. It points out that the City's tax base is declining and that the City faces a substantial loss in State aid. According to the City, its assessments have declined by some 19.1 million dollars for the period 1989 to 1991. Similarly, it asserts, State aid will decline by 2.1 million dollars for 1990-91. In addition, the City projects an \$800,000 shortfall in sales tax revenues for 1990-91.

Given these factors, the City maintains it cannot afford the wage increases given the PBA. Accordingly, it asks that improvements below 5.75% be awarded for the fiscal years 1989-1990 and 1990-91.

2. Vacations

The Union seeks 2.5 working days vacation for each

year. It contends that White Plains' Firefighters do not compare favorably with their counterparts elsewhere in this area.

The City sees no need to increase the number of vacation days. Instead, it asks that the vacation schedule not be affixed to the Agreement and that the Chief be given the authority to reschedule vacations on an as needed basis.

3. Out of Title Pay

The Union asks that Firefighters working in the capacity of a higher level Officer be paid at the higher rate of pay. It also seeks similar higher compensation for Lieutenants who perform certain Deputy Chief duties. In the Union's view, this proposal fairly reflects the increasing responsibilities that Firefighters and particularly Lieutenants face. It also suggests that this proposal is especially justified since other communities, such as Mount Vernon, utilize the Captain rank above that of Lieutenant. No such rank exists in White Plains, the Union notes. Thus, it asks that this proposal be adopted.

The City asserts that Firefighters and particularly Lieutenants receive sufficient compensation so as not to warrant out-of-title pay.

4. Fringe Benefits Fund

The Union seeks annual contributions to the Fringe

Benefits Fund of 2.5% of top pay for a Firefighter, effective July 1, 1989, and 3.0% effective July 1, 1990.

The City sees no need to increase the current stipend.

5. Uniform and Maintenance Allowance

The Union asks for an increase in this stipend to 1% of top pay for a Firefighter. It also asks that the City furnish Union members with five winter and five summer uniforms each year.

The City rejects these proposals as unnecessary. Instead, it asks that employees be paid such a differential only if they work six weeks in the time frame in which the allowance is granted.

6. Check-In Time

The Union asks for 6% of salary for bargaining unit members for check-in time.

The City sees no need for this proposal.

7. Night Differential

The Union asks for a ten per cent differential for all night work. It points out no differential is currently paid. In the Union's view, equity demands that a night differential be paid.

The City maintains that this proposal is very expensive to implement. It sees no need to impose such an

economic cost.

8. Hazardous Duty Pay

The Union asks for hazardous duty pay based upon a schedule outlined in its amended proposal (Joint Exhibit 3). In essence, the Union demand is designed to trigger hazardous duty pay when the complement on a piece of apparatus falls below four and when engine or truck companies are closed.

The City sees no need to grant this proposal.

9. Longevity

The Union asks that the current schedule be increased to reflect the following payments:

3% at 5 years of service
6% at 10 years
9% at 15 years
12% at 19 years

The Union contends that Firefighters elsewhere have received longevity improvements. It sees no reasons why such improvement should not be made in White Plains, as well.

The City maintains there is no need to improve longevity payments.

10. Released Time for Association Business

The Union asks for additional released time for Union officials. It contends this is necessary for these Officers to attend to necessary Union business.

The City contends that the current released time is more than sufficient. It asks that the amount of time be

reduced, and for related changes.

11. Discipline and Discharge

The Union asks for a discipline procedure which would constitute an alternative, at the Firefighter's option, to Section 75 of the Civil Service Law. Such a procedure, which would end in binding arbitration, is necessary to accord due process to charged Firefighters, according to the Union.

The City maintains that charged Firefighters currently have ample protection pursuant to Section 75 of the Civil Service Law. Thus, it sees no need to incorporate this proposal into the Agreement.

12. Holidays

The Union seeks three additional holidays, payable at twelve hours per day. In its view, relevant comparisons require an improvement in holiday pay.

The City contends that this proposal is very costly and unwarranted.

13. Fire Department Letter of Policy

The Union asks that the current letter, with certain modifications, be incorporated into the Agreement.

The City sees no need to grant the Union's request.

14. General Health and Safety Committee

The Union asks for the creation of such a committee to deal with health and safety issues. It suggests that on-the-job injury claims are rising and that, therefore, such a

committee is necessary.

The City contends that there are sufficient avenues to deal with these issues. Therefore, it asks that the proposal be rejected.

15. Education

The Union seeks an increase in the Education Fund balance to \$2,500 per year with the unused portion carried over into succeeding years. It also seeks an increased differential for bargaining unit members with advanced certifications or degrees.

The City rejects this proposal as unnecessary.

16. Agency Shop

The Union asks that an Agency Shop proposal be incorporated into the Agreement. It contends that such a proposal is only fair since it must represent all bargaining unit members, including those who do not belong to the Union.

The City insists that an Agency Shop provision should be negotiated by the parties and not awarded in Interest Arbitration.

17. Sick Leave

The Union asks for an increase in sick leave accumulation to 216 hours per year. Unused sick days would go into a bank which it would administer. In addition, the Union asks for additional compensation of \$150 per day when individuals are required to verify their presence at their

sick location. It also asks for payment of one-half of unused sick leave upon the retirement of an employee.

The City contends the proposal is both costly and unjustified. It also asks for a reduction in sick leave to eight days per year, as well as an accrual of personal leave on a calendar year basis.

18. GML 207A Medical Review Proceeding

The Union asks for a Medical Review Board to make determinations regarding the applicability of Section 207A to Firefighters' claims of injury or illness.

The City asserts that current procedures are adequate to deal with these claims. It also asks that employees on 207A status be confined to their home during the duration of their illness or injury unless the Department determines otherwise.

19. Grievance Procedure

The Union asks for numerous changes in Article XXXI. (See Joint Exhibit 3). In essence, these proposals would streamline the processing of grievances and provide for binding arbitration, according to the Union.

The City sees no need to adopt these changes. Instead, it asks that language prohibiting the Arbitrator from modifying the Agreement be added to this article.

20. Employee Assistance Program

The Union asks that its EAP proposal submitted to

the Common Council in March, 1986, be adopted.

The City rejects the proposal as unnecessary.

21. Food Provisions (Deputy Chiefs Unit)

The Union asks that individuals who purchase food under the conditions set forth in the Agreement be reimbursed within 24 hours.

The City rejects this proposal as impossible to implement.

22. No Collection (Deputy Chiefs Unit)

The Union asks that no Deputy Chief be required to participate in any substance testing of Firefighters.

The City contends the proposal is unworkable.

23. Probation

The City seeks the following probation periods:

Firefighters - 18 months
Lieutenants - 1 year
Deputy Chiefs - 1 year

In its view, these periods are necessary to properly evaluate an employee.

The Union maintains that the current provisions afford the Department ample time to decide if the employee should attain permanent status.

24. Tours of Duty

The City asks for the authority to reschedule bargaining unit members' working days, provided reasonable advance notice is given.

The Union contends there is no need for this proposal.

25. Exchanges

The City asks that exchanges be limited to eight per year and that advance notice of an exchange be increased to five days.

The Union maintains there is no evidence the current system has impaired the operation of the Department.

26. Major Maintenance Work

The City asks that employees be required to perform all major maintenance work as directed.

The Union rejects this proposal.

27. Benefit Plans

The City seeks numerous changes in Benefit Plans, with specific reference to health insurance. In essence, it asks for the right to require new employees to enter an HMO for their first year of service, to change carriers provided the new plan is comparable to the existing one and to deny health insurance to those who are covered by their spouses. The City also asks that its health insurance contribution be frozen at the July 1, 1989 level.

The Union insists that no diminution of health insurance benefits is justified. It maintains that health insurance premiums have risen minimally in the past year. When increases were great, no concessions were made, the

Union points out. Thus, it sees no need to make any concession now.

28. Personal Property Replacement

The City asks that it pay for property lost or damaged only if it is required to be worn on duty.

The Union rejects this proposal as unnecessary.

29. Temperature Guidelines

The City asks that temperature guidelines relating to when inspections or training can occur be deleted.

The Union maintains that the guidelines protect members of the bargaining unit from unsafe or unhealthy conditions.

30. Height and Weight Standards

The City asks that bargaining unit members be required to strive to meet weight standards. It sees this as a proposal which will assist employees in achieving better health.

The Union insists there is no need to so intrude upon employees' private lives.

31. Compensatory Time

The City asks that the clause ". . . however, employees shall not be charged for absences or off duty injuries of less than four weeks" be deleted from the Agreement.

The Union rejects this proposal.

32. Staff Meetings (Deputy Chiefs Unit)

The City asks that it be given the right to call in Deputy Chiefs for staff meetings, at its discretion. It would give such employees personal leave for such time. In the City's view, it needs to have Deputy Chiefs available to deal with pressing Departmental matters.

The Union maintains that Deputy Chiefs can be called in so long as they are appropriately paid. Thus, it suggests, rejection of this proposal would not impair the operations of the Department.

DISCUSSION AND FINDINGS

Several introductory comments are appropriate. This Panel is constituted pursuant to Section 209.4 of the Civil Service Law. As such, we are required to consider the statutory criteria contained therein in making our determination. These criteria are:

209.4 (v)

- a. comparison of the wages, hours and conditions 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.

With these principles in mind, we turn to the facts of this case.

Central to this dispute is the relevant comparison which must be made, as required by Section 209.4 (v)a. The record reveals that White Plains Firefighters and White Plains Police Officers have had a long standing tandem relationship for many years. This relationship has been incorporated in both wage and benefit settlements.

A review of the Police and Fire Collective Bargaining Agreements reveals that since 1975, percentage increases have been the same for both units. The wage improvements won by the unit which settled first were always matched by the unit which settled thereafter. This pattern has existed without interruption for some thirteen years. This review is based upon the documents submitted into

evidence as well as the unchallenged representation by the City that police and fire salary settlements have been identical. (See City Exhibits 3, 12, 13, 15, 18, 22).

Furthermore, City Exhibits 1 and 2 make clear the existence of lock step progression of various benefits, in both units.² For example, from 1974 until the present, the annual contribution to the benefit fund has been identical for each unit, beginning with \$100 per employee in 1974 and continuing to the present \$475 per employee.

A virtual identical parity has existed for vacation allotment. As of July 1, 1972, Police Officers with ten years of service had 29 vacation days while Fire Officers enjoyed 30 days off. However, in July, 1973, this slight disparity was remedied. Since that date and until the present, all Firefighters and Police Officers with the same number of years of service have the same vacation days.

The same is also true for holidays, with all Police Officers and Firefighters granted 12 holidays per year.

Longevity benefits were first incorporated into the Police and Fire Agreements in July, 1974. They, too, have remained identical in both units since then.

The Uniform Allowance was introduced into the Police Agreement in July, 1978. In July, 1980, Firefighters

2. The exhibits summarize the benefits received by both units. The source data, i.e., the Agreements themselves indicate that the exhibits are correct.

gained the identical allowance, then \$100. Since July, 1980, the uniform allowance has been identical in both units. It is now \$235 (not counting the newly negotiated PBA settlement).

In sum, then, for many years wage and benefit improvements have travelled identical paths in the Police and Fire units in White Plains. Clearly, this comparison is entitled to greatest weight. It has existed for a very long period of time. It has been uniform and consistent. Absent compelling circumstances to the contrary, it is entitled to greatest weight.

The Union argued that Firefighters in White Plains must be compared to other Firefighters in Westchester County. Obviously, this argument has merit. Section 209.4 (v)a does not limit relevant comparisons to units within a municipality. Clearly, there is a community of interest between White Plains Firefighters and those in other Westchester communities.

However, the comparison suggested by the Union is overbroad. Traditionally, White Plains public employees have been compared to their counterparts in two other Westchester cities - Mount Vernon and New Rochelle. This comparison is contained in various interest arbitration and factfinding awards and reports. (e.g. City Exhibits 6, 7 and 22).

Perhaps the most comprehensive statement as to the

relevant universe is contained in an Interest Arbitration Award between the City of White Plains and the PBA, for the period 1985-1987. In that case, the Public Panel Member concluded:

In regard to comparisons external to the City, a decision has to be made concerning which are the most comparable communities. In this case, historically, over a period of over ten years, eight neutral arbitrators and fact-finders adjudicating cases of police in White Plains, New Rochelle, and Mount Vernon have found these three cities to be the most important basis comparison, hereafter "the three-city comparison." Five neutrals have made the same comparisons of these three cities for firefighters. None to our knowledge has found any other external comparison, for example to towns and villages, to be of greater significance than the three-city comparison. The Chairman of this Arbitration Panel believes comparison to other communities than the three cities is acceptable in evidence, and must be reviewed and given some consideration. But he agrees with the earlier neutrals that the most significant comparison, in terms of similarity of services, similarity of community conditions and required skills, and the legal and financial constraints on the employer, is the three-city comparison, which must, therefore, be given the greatest importance.

(City Exhibit 22; pp 7-8)

Nothing in the instant record warrants disturbing this finding. Thus, while other settlements cannot be ignored, the cities of White Plains, New Rochelle and Mount Vernon clearly form the most relevant universe, outside the City of White Plains, for comparing collective bargaining agreements, as required by Section 209.4 (v) a of the Civil Service Law.

Do the New Rochelle and Mount Vernon comparisons

justify violating the pattern established by the Police settlement for 1989-91? The Panel is convinced they do not.

Both the Mount Vernon and New Rochelle Firefighters received more generous pay raises than did the Police in White Plains. (Union Exhibits 20 and 22). These improvements are summarized as follows:

MOUNT VERNON: 6% increases for 1989 and 1990; no health premium contributions by bargaining unit members³

NEW ROCHELLE: 6% increases in 1989 and 1990; added longevity step and EMT differential; reduced health insurance premium contribution for employees hired after January 1, 1983

WHITE PLAINS PBA: 5.75% increases in 1989 and 1990; \$50 increase in uniform allowance in 1989 and 1990; new employees pay 25% of health insurance premium for the first five years of service.

Thus, it is true, as the Union contended, that the New Rochelle and Mount Vernon settlements exceed those won by the White Plains PBA.

However, applying the White Plains PBA settlement to the White Plains Firefighters retains the latter unit's favorable position when compared to Mount Vernon and New Rochelle Firefighters as follows:

<u>City</u>	<u>Effective Date</u>	<u>Firefighter Wage</u>
Mount Vernon	1/1/91	\$40,304
White Plains	7/1/90	\$39,081
New Rochelle	1/1/90	\$37,415

(Union Exhibit 38)

3. Additional longevity and Lieutenant differential pay is effective in 1991.

Thus, White Plains wages will be substantially above New Rochelle's. While they are somewhat below Mount Vernon's, the White Plains increase is effective six months earlier than Mount Vernon's thereby mitigating, to some extent, the disparity in wages.

With respect to health insurance, it is true that newly hired Firefighters will pay 25% of their premium for the first five years of service, while their counterparts in Mount Vernon pay nothing. However, despite improvements won by New Rochelle Firefighters, they will still pay far more for health insurance than Firefighters in White Plains. In New Rochelle, all those hired after January 1, 1983 pay approximately 25% for health insurance coverage for as long as they are in the bargaining unit. In White Plains, by contrast, only those hired after June 28, 1991 will pay 25% of their health insurance premium. Moreover, this payment ceases after five years, in stark contrast to the "lifetime" payment for New Rochelle Firefighters. Thus, while White Plains Firefighters' health insurance benefit will not be as good as that in Mount Vernon, it will surpass the New Rochelle benefit.

Given these factors, it is clear that the White Plains PBA Settlement must be applied to the White Plains Firefighters. It reflects a long standing parity in wages and benefits between the two units. It does not unduly

disadvantage White Plains Firefighters when they are compared to others in their relevant universe, i.e., New Rochelle and Mount Vernon. Thus, the Panel finds that the PBA settlement, with respect to wages, health insurance and uniform allowance, constitutes the economic improvements to which the instant bargaining unit is entitled.⁴

The Union asserted that this result destroys collective negotiations through slavish adherence to the PBA pattern. The Panel does not agree. The pattern imposed is consistent with the parties' negotiations, history and relationship. Also, the pattern imposed prevents "leap frogging" which can be detrimental to the City as well as both Unions. (See similar conclusions in City Exhibit 23, p. 12). Furthermore, the record does not contain compelling evidence to depart from this pattern. Thus, the Union's argument must be rejected.

The Union also asserted that an Interest Arbitration Panel should not award any diminution in health insurance benefits. In its view, such a modification is best left to the parties to negotiate.

The Panel does not agree with this contention. Health insurance is a fringe benefit like many others. It is not unique. It can be increased or decreased. It is not a new issue which should be remanded for bilateral negotiations. Consequently, the Panel does not find that

4. Health insurance changes are inapplicable to the Deputy Chiefs Unit.

health insurance benefits are immune from modification by an Interest Arbitration Panel.

Given these factors, it is clear that the pattern imposed by the PBA settlement does not wreak havoc nor hardship upon White Plains' Firefighters, though it is less generous than other settlements. Were there compelling evidence to impose anything other than the PBA settlement, the Panel would have so found. The record does not demonstrate the existence of such evidence. Accordingly, and for the foregoing reasons, the Panel concludes that the 1989-91 Agreement should mirror the Agreement reached with the White Plains PBA.

There remains the other issues to be considered. While each will be discussed separately, the analysis above, as it relates to comparisons between the PBA settlement and the instant dispute, is applicable to many of the remaining items.

a. Vacations - Vacations are currently identical with those granted the PBA. No compelling evidence exists to suggest they should be modified. Nor is the panel

5. The Panel notes that the PBA Agreement applied the health insurance premium co-payment to Police Officers hired after January 1, 1990. Our Award applied this provision to Firefighters hired after June 28, 1991. In both instances, the effect is the same: a prospective application of this provision. To the extent the Firefighter settlement saves the City less money than the Police agreement, such reduction in savings is offset by the interest which the City made because the Firefighter agreement was resolved some eighteen months after the Police negotiations.

convinced that the Chief requires added discretion in the scheduling of vacations, as suggested by the City. Thus, all vacation proposals are rejected.

b. Out-Of-Title Pay - It is true, as the Union noted, that New Rochelle and Mount Vernon have Captains, while White Plains does not. However, in White Plains the Deputy Chief functions to some extent, as a Captain. Also, the record reveals, the City will be instituting a system to remove report writing from the duties of those Firefighters who function as Drivers. Thus, despite some differences in the organizational charts between White Plains and the two other cities, the Panel is not persuaded that out-of-title pay must be granted. Consequently, this proposal is rejected.

c. Fringe Benefit Fund - As noted above, this benefit is identical to that given the PBA. The Union has not presented compelling evidence to improve it. Thus, this proposal is rejected.

d. Uniform and Maintenance Allowance - This issue has been previously discussed.

e. Check-In Time - No basis exists to award this proposal.

f. Night Differential - It is true that Firefighters are not paid a Night Differential while PBA

members are. However, Night Differential is not traditionally paid Firefighters. An interest arbitration panel should not impose such a new benefit. It is rejected.

g. Longevity - Like other benefits, longevity for Firefighters mirrors that paid PBA members. No compelling evidence exists to disturb this pattern. Thus, the Union's proposal is not awarded.

h. Released Time for Association Business - The Panel is not persuaded that Union Officers require additional time off to conduct Union business. Nor is the current released time so excessive as to require a reduction in current allotments, as suggested by the City. However, the Panel is convinced that the phrase "any formal hearing or proceeding", found in Article XXI (g) should be modified to delineate the types of proceedings involved. Thus, to this extent only, the City's proposal is granted with the proviso that the Union's right to attend and participate in court proceedings shall not be limited as a result of this modification.

i. Discipline and Discharge - The Panel is not persuaded that the current provisions, as implemented, deprive Firefighters of substantial due process. Thus, the Union's proposals are rejected.

j. Holidays - As noted above, holidays are

identical in the PBA and Firefighter units. Also, holidays granted New Rochelle and Mount Vernon Firefighters are the same as those in this bargaining unit. (Union Exhibit 69). Thus, there exists no basis to make improvements in this benefit.

k. Fire Department Letter of Policy - The Panel finds no basis to incorporate this policy into the Agreement, as requested by the Union.

l. General Health and Safety Committee - The Panel is persuaded that current mechanisms are adequate to deal with health and safety issues. Thus, the Union's proposal is rejected.

m. Education Benefit Fund - There is no evidence to suggest that the current cap of \$1,500 prevents Firefighters from taking relevant courses. Nor is there evidence that the cities of Mount Vernon or New Rochelle provide a substantially better benefit. Thus, the Union's proposal must be rejected.

n. Agency Shop - An Agency Shop proposal may well make sound labor relations sense. However, this item is best left for negotiations by the parties. Accordingly, it is not awarded.

o. Sick Leave - The current sick leave provisions do compare unfavorably with other Firefighter bargaining

units, particularly the cities of Mount Vernon and New Rochelle. Consequently, the Panel finds no basis to grant improvements in this area. Similarly, there is also no basis to grant the sick leave reductions sought by the City. Thus, both parties' proposals on sick leave are rejected.

p. 207A Review Proceeding - The Panel is not convinced it should impose contract modifications in this area. These are best left for the parties to negotiate themselves.

q. Employee Assistance Program - The concept of an Employee Assistance Proposal is laudable. However, the record does not provide a sufficient basis to justify granting the Union's proposal. Consequently, it is rejected.

r. No collection (Deputy Chiefs Unit) - As supervisors, Deputy Chiefs can be legitimately required to participate in the substance testing of Firefighters. Thus, the Union's proposal should not be awarded.

s. Probation - The City has not demonstrated an inability to adequately evaluate bargaining unit personnel within the current probationary periods. Thus, its demand for longer probation must be rejected.

t. Tours of Duty - The City has not presented compelling evidence to warrant giving it greater leeway in rescheduling the work day of Firefighters. Consequently, this proposal is not awarded.

u. Exchanges - There is no evidence that the current system of exchanges impairs the efficient operation of the Department. Thus, the City's proposal is rejected.

v. Major Maintenance Work - Even though a grievance by a bargaining unit member may have been submitted on this issue, the Panel is not convinced that the existing language hampers the Department. Therefore, the City's proposal must be rejected.

w. Benefit Plans - The issue of payment of health insurance premiums has been fully analyzed above. Other changes sought by the City are not warranted. Stated simply, requiring new Firefighters to pay 25% of their health insurance premiums for the first five years of service affords sufficient relief to the City in the area of benefit plans, so that no other changes are warranted. Consequently, all other City proposals relating to benefit plans are rejected.

x. Personal Property Replacement - The City's proposal would bar replacement of some items which are normally worn while Firefighters are on duty. Thus, the Panel finds, it is inequitable and should not be awarded.

y. Temperature Guidelines - The City has demonstrated that the current language, as written, could substantially impair its ability to conduct training sessions

and inspections. Moreover, the Panel is convinced, the elimination of these guidelines will not endanger Firefighters. Thus, the Panel shall direct that references to such temperature readings be deleted from the successor Agreement.

z. Height and Weight Standards - The Panel is convinced that the City's proposal is, essentially, unworkable. It is rejected.

aa. Compensatory Time - The City has not established a basis for awarding this proposal.

bb. Staff Meetings (Deputy Chiefs Unit) - Currently, Deputy Chiefs can be called in for necessary meetings. The City's proposal is, therefore, unnecessary.

For the foregoing reasons, the Panel awards the modifications discussed above. It is so ordered.

A W A R D

Firefighters and Fire Lieutenants' Unit

1. All terms and provisions of the 1987-89 Agreement shall remain in full force and effect, except as modified below.
2. The successor Agreement shall commence on July 1, 1989 and expire on June 30, 1991.
3. References in the successor Agreement to the prohibition of conducting training and/or inspections below or above certain temperature readings shall be deleted.
4. Wages rates contained in the Agreement shall be increased as follows:

Effective July 1, 1989 - 5.75%
Effective July 1, 1990 - 5.75%
5. Clothing allowances shall be increased as follows;

Effective July 1, 1989 - \$50
Effective July 1, 1990 - \$50
6. Bargaining unit members hired by the City after June 28, 1991 shall be required to pay 25% of the cost of their health insurance premiums for the first five years of service with the City.

7. The phrase "any formal hearing or proceeding" in Article XX(f) shall be changed to, "a Section 75 hearing, PERB proceeding, formal administrative proceeding involving Section 207-a of the General Municipal Law, and/or contract grievance proceeding, including arbitration." Add to the end of the paragraph the following: "Nothing herein shall be construed to limit the Association's right, if any, to attend and participate in any Court proceeding."
8. Appended to this Award is a marked-up copy of a contract reflecting the changes awarded by the Panel and/or previously agreed to by the parties. The City is hereby directed to promptly retype the contract with these changes. The parties are further hereby directed to promptly execute said contract upon its presentation by the City to the Union.
9. All other proposals of the City and the Union are rejected.

DATED: August 29, 1991

Howard C. Edelman
 HOWARD C. EDELMAN, ESQ.,
 Panel Chairman

STATE OF NEW YORK)
) SS.:
 COUNTY OF NASSAU

Sworn to before me on this 27 day of August 1991.

Patricia D. Rendine
 Notary Public

A W A R D

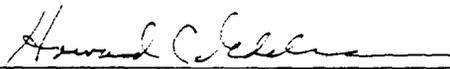
Deputy Chiefs Unit

1. All terms and provisions of the 1987-89 Agreement shall remain in full force and effect, except as modified below.
2. The successor Agreement shall commence on July 1, 1989 and expire on June 30, 1991.
3. References in the successor Agreement to the prohibition of conducting training and/or inspections below or above certain temperature readings shall be deleted.
4. Wages rates contained in the Agreement shall be increased as follows:
 - Effective July 1, 1989 - 5.75%
 - Effective July 1, 1990 - 5.75%
5. Clothing Allowances all be increased as follows:
 - Effective July 1, 1989 - \$50
 - Effective July 1, 1990 - \$50
6. The phrase "any formal hearing or proceeding" in Article XXI (g) shall be changed to, "a Section 75 hearing, PERB proceeding, formal administrative proceeding involving Section 207-a of the General Municipal Law, and/or contract grievance proceeding, including arbitration.

Add to the end of the paragraph the following: "Nothing herein shall be construed to limit the Association's right, if any, to attend and participate in any Court proceeding."

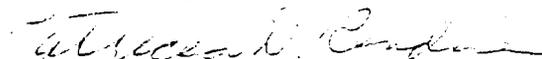
7. Appended to this Award is a marked-up copy of a contract reflecting the changes awarded by the Panel and/or previously agreed to by the parties. The City is hereby directed to promptly retype the contract with these changes. The parties are further hereby directed to promptly execute said contract upon its presentation by the City to the Union.
8. All other proposals of the City and the Union are rejected.

DATED: August 29, 1991


HOWARD C. EDELMAN, ESQ.
Panel Chairman

STATE OF NEW YORK)
) SS.:
COUNTY OF NASSAU)

Sworn to before me on this 29th day of August, 1991.


Notary Public

PATRICIA D. RENDINE
Notary Public, State of New York
No. 4921671
Qualified in Nassau County
Commission Expires Feb. 22, 1992

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD
-----X
In the Matter of The
Interest Arbitration

Between
CITY OF WHITE PLAINS

"City"

and

LOCAL 274, INTERNATIONAL ASSOCIATION
OF FIREFIGHTERS, AFL-CIO, CLC

"Union"

-----X
Union Panel Members Dissenting Opinion

On June 24, 1991 I dissented from the awards in the above-referenced. The issuance of a majority opinion followed the issuance of the awards. I dissent from the majority opinion. The majority holds that the PBA settlement with respect to wages, health insurance and uniform allowances is the appropriate constitution of economic improvement to which these firefighter bargaining units are entitled. The majority stands on what it perceives to be long standing parity between the two units (i.e. the two firefighters units and the PBA). This ignores, for example, that the PBA receives night differential, while the firefighters do not. If parity is the guide, night differential, as demanded, should be awarded to the firefighters herein.

More importantly, the record demonstrates that the percentage economic settlement arrived at, for New Rochelle and Mount Vernon firefighters, exceeds those which the majority would grant the White Plains units. If, as the majority maintains,

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PERB CASE NOS.
IA 89-033
M 89-183 & 184

Firefighters and
Fire Lieutenants
Unit and Deputy
Chiefs unit

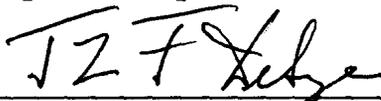
White Plains relative universe is primarily comprised of itself, New Rochelle and Mount Vernon, there is no logic to indicate that White Plains, a City which plainly has a better ability to pay than the other two, should pay their firefighters a smaller percentage economic increase.

The award also ignores the cogent arguments advanced by the union in favor of an increase in fire lieutenants differential. The record reflects that fire lieutenants in Mount Vernon and New Rochelle receive a greater differential, than their counterparts in White Plains. The union established that the supervisory responsibilities and work load of White Plains fire lieutenants is comparable with, if not exceeds, those of similar rank in comparable cities.

Finally, the record reflects that the police settlement, upon which these awards are premised, did not rise to the level of police settlements for the same time frame in comparable communities. The fact, that the PBA, for whatever reason, agreed to settlements at less than the "going rate" should not inure to the detriment of these units.

Dated: White Plains, New York
March 13, 1992

Respectfully submitted,



Thomas F. DeSoye
Union Panel Member