

PERB

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of Compulsory Interest
Arbitration between

Opinion and Award

ALBANY PERMANENT PROFESSIONAL
FIREFIGHTERS ASSOCIATION, LOCALS 2007
AND 2007-A, Petitioners

PERB Case No. IA90-28,
M90-443-444

AND

THE CITY OF ALBANY, NEW YORK
Respondent

NYS PUBLIC EMPLOYMENT RELATIONS BOARD
RECEIVED

MAR 19 1992

CONCILIATION

Before: The Public Arbitration Panel
Sumner Shapiro, Public Member and Chairman
Thomas F. DeSoye, Employee Organization Member
Vincent J. McArdle, Public Employer Member

I. INTRODUCTION

This document constitutes the Opinion and Award of a Public Arbitration Panel designated by the New York State Public Employment Relations Board, pursuant to Civil Service Law 209.4 on April 15, 1991. The petitioners are the Albany Permanent Professional Firefighters Association, Locals 2007 and 2007-A; hereinafter referred to as "the Union", "the Petitioners", "the Employees" or "the Firefighters". The respondent is the City of Albany, New York; hereinafter referred to as "the Employer", "the City", "the AFD", "the Respondent", or "the Administration." The Petitioners and Respondent were parties to two Collective Bargaining Agreements for the term of January 1, 1989 to December 31, 1990, which Agreement represented the award of a prior Interest Arbitration Panel in PERB Case No. IA88-42. Following unproductive efforts to negotiate a successor to that Agreement,

which expired on December 31, 1990, through mediation under the aegis of the New York State Public Employment Relations Board (PERB), the Union petitioned for compulsory interest arbitration for both Local 2007 representing Firefighters, Lieutenants and Captains and Local 2007-A representing Battalion Chiefs employed in the City of Albany New York Fire Department (AFD). The petition identified 35 specific proposals relating to impasse items and proposed further discussions on three additional items. Additionally, it included 5 proposals relating to impasses involving only Local 2007-A, Battalion Chiefs.

The Employer responded on March 1, 1991 annexing thereto its bargaining demands involving approximately 37 demands.

A number of each parties' proposals were ultimately rejected by a Panel majority or withdrawn in executive sessions of the present proceeding and most will not be discussed in the Opinion section of this document.

Pursuant to Section 209.4 of Civil Service Law, the PERB designated a Public Arbitration Panel on April 15, 1991 as follows:

Public Panel Member and Chairman: Sumner Shapiro
64 Darroch Road
Delmar, NY 12054

Public Employer Panel Member: Vincent J. McArdle., Jr, Esq.
Corporation Counsel
City of Albany - City Hall
Albany, NY 12207

Employee Organization Panel Member: Thomas F. DeSoye, Esq.
235 Main Street
White Plains, NY 10601

The Panel conducted arbitration hearings on the premises of the Albany Fire Department Headquarters on July 10, 1991, July 11, 1991, August 5, 1991, August 8, 1991, September 12, 1991, and September 13, 1991, at which time the parties were afforded unrestricted opportunity to present testimony and documentary evidence, to examine and cross-examine witnesses and to offer arguments in support of their respective positions. Both parties were represented by Counsel and neither raised any objection to the fairness or completeness of the hearings. The parties elected to exchange and file post-hearing briefs on November 7, 1991 and both were timely in doing so. The Panel has adhered to the terms of its charge, to make a just and reasonable determination of all issues before it and take into consideration in addition to any other relevant factors, the following:

- a. comparison of the wages, hours and conditions of employment of the employees involved in the arbitration 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 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 or skills;

- d. the terms of the 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.

Appearances were as follows:

For the Union:

- * Ronald G. Dunn, Esq.
Gleason, Dunn, Walsh & O'Shea
11 North Pearl Street
Albany, NY 12207
Counsel
- * William J. Tobler
*** President, IAFF Local 2007

##
- * Robert A. Barber
Battalion Chief
Albany Fire Department
Representing IAFF Local 2007-A
- ** Edward J. Fennell
Municipal Finance Consultant
32 Zelenke Avenue
Wynantskill, NY 12198
- ** Anthony J. Hynes
Consultant
6399 Mayflower Lane
Lakeview, New York 14085
- *** Eileen Leary
Psychologist/Therapist
P.O. Box 117
Greenfield Center, New York 12833.
- *** Michael A. Steadman
Firefighter, AFD
- *** Jeffrey Weaver
Firefighter, AFD

- * Present all sessions # Witness August 8, 1991
- ** Witness July 10, 1991 ## Witness, September, 1991
- *** Witness July 11, 1991
- **** Witness August 5, 1991

*** John Wittig
Firefighter, AFD

*** Kenneth Dott
Paramedic, AFD

*** Joseph Geraci
Firefighter, AFD

*** Kevin Crosier
Paramedic, AFD

*** Michael Burns
Acting Battalion Chief, AFD

*** Joseph Gregory
Firefighter, AFD

John Walsh
Firefighter, AFD
Union Safety Officer

For the City of Albany, New York:

* John C. Egan, Esq.
Asst., Corporation Counsel
City of Albany, New York
Counsel

* Stacy Kitt, Esq.
Asst. Corporation Counsel
City of Albany, New York

* James W. Larson
Chief, AFD
##

* Warren W. Abriel, Jr.
Deputy Chief, AFD

**** Sandra Starke
Deputy Budget Director
City of Albany, New York

**** Spiros Socaris
Lieutenant, AFD

Dominic Belmonte, M.D.
Dept. Surgeon, AFD

* Present all sessions # Witness August 8, 1991
** Witness July 10, 1991 ## Witness, September, 1991
*** Witness July 11, 1991
**** Witness August 5, 1991

Austin R. Sennett
Consultant
Fire Safety Services
273 Hanover St., Suite #7
Hanover, MA 02339

Witness, September 13, 1991

The following exhibits were placed in evidence:

Joint Exhibits:

- J1. Copy of Union Petition for Compulsory Interest Arbitration, dated February 19, 1991
- J2. Copy of Employer's response to petition, dated March 1, 1991.
- J3. Copy of Notice of Designation of Public Arbitration Panel by PERB dated April 15, 1991.
- J4. Copy of City of Albany Improper Practice Charge of March 1, 1991, PERB Case No.U-12329.
- J5. Copy of response of Albany Permanent Professional Firefighters Association, Locals 2007 and 2007-A, AFL-CIO-CIC to Improper Practice Charge, Case No.U-12329, March 29, 1991.
- J6. Copy of letter from Gordon R. Mayo, Administrative Law Judge, PERB, to Counsels Egan and Dunn re: IP Charges April 8, 1991.
- J7. Copy of letter from Counsel Dunn to Counsel Egan advising of withdrawal of two proposals involved in IP charge, April 17, 1991.
- J8. Copy of decision of PERB Administrative Law Judge Mayo in IP Case No.U-12335.
- J9. Copy of 83-85 Collective Bargaining Agreement, between the City of Albany and Albany Professional Firefighters (then a single bargaining unit).
- J10. Copy of 86-88 Agreement between the City of Albany and Albany Professional Firefighters, Local 2007.
- J11. Copy of 86-88 Agreement between the City of Albany and Albany Professional Firefighters, Local 2007-A.

- J12. Copy of Interest Arbitration Panel award fixing terms of agreement between the City of Albany and the Albany Professional Firefighters Association, Locals 2007 and 2007-A for the term of January 1, 1989 through December 31, 1990.
- J13. Copy of Civil Service job description for Firefighters, Fire Lieutenant, Fire Captain and Fire Battalion Chief.
- J14. Copy of Albany Fire Department seniority list as of January, 1991.

Union Exhibits:

- U1. Bureau of Labor Statistics Consumer Price Index, May, 1991, Northeast Class C Community.
- U2. Bureau of Labor Statistics Consumer Price Index, detailed report, April 1991.
- U3. Historic summary, Bureau of Labor Statistics, Consumer Price Index, Urban Workers.
- U4. Review of financial documents of the City of Albany, New York by Edward Fennell Associates, July 7, 1991.
- U5. Review of the financial documents of the City of Albany, New York Edward J. Fennell Associates, July 11, 1989.
- U6. Billing rates, New York State and Local Retirement System, 1989.
- U7. Billing rates, New York State Retirement System, 1990.
- U8. Excerpted article from NYCOM Municipal Bulletin, re: pension cost reductions for local government, Peter A. Baynes, July - August, 1989.
- U9. Population data and community statistics for Albany, Buffalo, Rochester, Syracuse and Yonkers, respectfully.
- U10. Population statistics for Schenectady and Troy, New York, respectfully.
- U11. New York State Department of Economic Development, Table of Population Counter Projections, New York State Counties, 1980-20-10.
- U12. Copy of memorandum from James W. Larson, Chief, AFD to all companies, re: Run Reports, March 13, 1991.

- U13. Copy of Agreement between City of Buffalo, New York and Buffalo Professional Firefighters Association, July 1, 1984 through June 30, 1986.
- U14. Copy of Agreement between the City of Rochester, New York and the Rochester Firefighters, July 1, 1990 through June 30, 1993.
- U15. Copy of Collective Bargaining Agreement between the City of Syracuse, New York and Syracuse Firefighters Association for the period January 1, 1989 through December 31, 1990.
- U16. Copy of Collective Bargaining Agreement between the Mutual Aid Association of the Paid Fire Department of the City of Yonkers and the City of Yonkers for the period January 1, 1987 through December 31, 1988 (A) and Memo of Understanding between the parties for the period January 1, 1989 through December 31, 1992 (B) and explanation of benefits, November 26, 1990 (C).
- U17. Copy of Collective Bargaining Agreement between the City of Schenectady, New York and City Firefighters Union for the period January 1, 1986 to December 31, 1988 (A) and Memorandum of Agreement for the years 1989, 1990 and 1991 (B).
- U18. Copy of Collective Bargaining Agreement between the City of Troy, New York and Troy Uniform Firefighters Association, January 1, 1990 through December 31, 1991.
- U19. Salary and benefit comparison sheets relating to Albany, Buffalo, Rochester, Syracuse and Yonkers Firefighters, Lieutenants, Captains and battalion chiefs prepared by Anthony J. Hynes, 24 sheets.
- U20, 21, and 22. International Association of Firefighters Summary of percent increases in Firefighter Compensation in the United States and Northeast Region.
- U23. Copy of treatment protocols and procedures, EMT/Paramedics, 1989, Regional Emergency Medical Organizations (REMO), Albany, New York.
- U24. Memorandum from James W. Larson, Chief, AFD, to all Firefighters hired after January 1, 1987 advising implementation of 1014 schedule effective September 1990, dated May 11, 1990.

- U25. Copy of cover letter and attachments from James W. Larson, Chief AFD, to William Tobler, President, Albany Professional Firefighters Association, setting forth details of 1014 scheduling as distributed to impacted members June 8, 1990.
- U26. AFD Roster, 12/7/90, 3/27/91, 5/6/91, and 5/7/91. 6 sheets.
- U27. CV of Eileen M. Leary, P.O. Box 117, Greenfield Center, New York 12833.
- U28. Copy of article from Psychosomatic Medicine, Volume 45, No. 5, October, 1983, "Intervention on Coronary Risk Factors by Adapting a Shift Work Schedule to Biologic Rhythmicity," Orth-Gomer, M.D.
- U29. Copy of article from Annual Reviews of Medicine, 1985, "Medical Implications of Shift Work," Moore-Ede, M.D., Ph.D. and Richardson, M.D., Department of Physiology and Biophysics, Harvard Medical School, Boston, Massachusetts 02115
- U30. Copy of article from Science, Vol. 217, 30 July 1982, "Rotating Shift Work Schedules That Disrupt Sleep are Improved by Applying Circadian Principles," Czeisler, Moore-Ede, M.D., Ph.D., and Coleman, Center for Design of Industrial Schedules, Division of Health Policy Research, Harvard University, Department of Physiology and Biophysics, Harvard Medical School, Sleep Disorder Clinic and Research Center, Stamford University School of Medicine, respectively.
- U31. Copy of article from American Journal of Public Health, October 1986, "The Prevalence and Health Impact of Shift Work," Borden, Sc.D., Cleary, Ph.D., Parker, M.D., and Czeisler, Ph.D., M.D.
- U32. Copy of article from the Journal of the American Medical Association, May 27, 1988, Medical News and Perspectives, "Rotating Work Schedules Give New Meanings to Familiar Early to Bed Early to Rise."
- U33. Copy of article from Personnel Journal, May 1988, "Is Moonlighting Mired in Myth"?
- U34. International Association of Firefighters' 1988 Death and Injury Survey.
- U35. International Association of Firefighters' Death and Injury Survey, 1989.

- U36. Copy of Complaint Investigation Report New York State Department of Labor, Division of Safety and Health, July 6, 1990. (O)
 - U37. Copy of notification of failure to abate violation, New York State Department of Labor, Division of Safety and Health, November 13, 1990. (O)
 - U38. Locational Staffing Summaries, AFD, Division #3. (O)
 - U39. Locational Staffing Summaries, AFD, Engine #3 (o)
 - U40. Locational Staffing Summaries, AFD, Engine #9. (O)
 - U41. Locational Staffing Summaries, AFD, Engine #10. (O)
 - U42. Locational Staffing Summaries, AFD, Rescue Squad. (O)
 - U43. Summary of Accident Experience, AFD.
 - U44. Copy of memo from Captain Michael Burns to Chief Larson (undated).
 - U45. Copy of response from Chief Larson to Captain Burns, January 11, 1991.
 - U46. Run report to comparison Cities of Buffalo, Rochester, Yonkers, Syracuse and Albany, January 1 through December 31, 1990.
 - U47. News release City of Albany, re: Fire Department Developments, March 11, 1991.
 - U48. Copy of memorandum from Chief Larson to all Department members re: retirement of rescue squad March 12, 1991.
 - U49. Memo from Chief Larson to all members re: retirement of Engine Three.
 - U50. Memo from Chief Larson to all Department members announcing formation and planned activation of tactical unit #1, March 12, 1991.
 - U51. Copy of Federal Register, Monday, outlining Federal Codes on Hazardous Materials, 29 CFR Part 1910, March 6, 1989.
- (O) conditionally admitted over employer objection subject to review by Panel and determination of admissibility and weight.

- U52. Copy of minutes of Labor Management Committee meeting undated - (about April 10, 1992).
 - U53. Copy of GHI Dental Benefits.
 - U54. Copy of GHI schedules.
 - U55. Copy of article from Money Magazine, March 1989, "Deducting Day Care", relating to flexible benefits.
 - U56. Flexible Benefits Programs by Marvin and Company, D.C.
 - U57. Copy of memo from John J. Walsh, Firefighters Safety Chairman to Robert Lynch, Deputy Chief, October 10, 1990.
 - U58. Copy of decision by arbitrator Neil D. Breslin, July 2, 1991.
 - U59. City of Utica Population Characteristics.
 - U60. Copy of Opinion and Award of Arbitrator Kevin Berry, Re: Pre-planned Opposite Shift Overtime, April 1, 1991.
 - U61. Copy of Blue Cross/Blue Shield Division Plan Proposal, August 1991.
 - U62. Blue Cross/Blue Shield, Vision Plan details.
 - U63. Copy of Report No. 91M-328, New York State Office of the State Comptroller, re: Financial Affairs of the City of Albany for the Fiscal Year Ending December 31, 1989. (O)
 - U64. Copy of an article in the Annals of Emergency Medicine, 11 November 1989, "Follow-up Report of Occupational Stress in Urban ENT-Paramedics Emergency Medicine", Medicine Department, Northwestern Memorial Hospital, Northwestern University Medical School, Chicago, Illinois and Emergency Medicine Department of Cleveland Metropolitan General Hospital. (O).
 - U65. Copy of Memorandum by Chief Larson re: Standard Operations Procedures Stipulated by New York State Labor Department, July 12, 1991.
- (O) conditionally admitted over employer objection subject to review by Panel and determination of admissibility and weight.

- U66. Memo from Firefighter Weaver to Chief Larson, re: 10/14 Rotating Shift Schedule, February 15, 1991.
- U67. Memo of decisions Supreme Court, State of New York, Re: Doherty, Therrien, Robertson and VanSchoick against the City of Albany, et al, Supreme Court, August 14, 1991.
- U68. Copy of fax to Counselor Dunn from Emergency Care Information Center (ECIC), re: Fire Department Shift Length Study, December 11, 1991.
- U69. Copy of National Fire Protection Association, Standard #1500, Occupational Safety and Health Programs, 1987 edition.
- U70. Copy of ECIC study publication, "Comparison of Occupational Stress Differences Between Fire Department's Dual-Role, Cross-Trained EMS Providers and Single-Role EMS Providers" for IAFF Cady, MICP, page JD.AM.

City Exhibits

- C1. Memorandum from Chief Larson to all Captains, re: Article 8.3.10 of Contract, dated June 7, 1991.
- C2. Copy of typical completed Albany Overtime Forms.
- C3. Copy of Collective Bargaining Agreement between the City of Niagara Falls and Niagara Falls Uniform Firefighters Association, 1990-1991.
- C4. Copy of Agreement between City of Utica, New York, Local 32, International Association of Firefighters, December 1986.
- C5. Copy of Agreement between the City of Binghamton, New York and the Binghamton Firefighters, Local 729, January 1, 1990 to December 31, 1992.
- C6. Copy of Collective Bargaining Agreement between the City of Albany, New York and the Albany Police Officer's Local 2841, January 1, 1986 through December 31, 1988.
- C7. Copy of award of the interest arbitration panel, Case IA88-45, Albany Police Officers, Union Local, 2844 and the City of Albany, New York, July 2, 1990.

- C8. Copy of the Collective Bargaining Agreement between the City of Albany, New York and the Albany Police Officers Patrol Unit, for the period January 1, 1991 through December 31, 1992.
- C9. City of Albany analysis Firefighter Union Contract Comparisons of Salaries and Other Benefits for Selective Municipalities, Sandra Starke, Deputy Budget Direction, August 8, 1991.
- C10. Copy of Grievance #363-91 by Spiros Socaris, July 25, 1991.
- C11. Copy of work schedule, Lieutenant S. Socaris, July, 1991, August 1991.
- C12. Listing of Albany Fire Department Houses and Equipment.
- C13. The Report of Austin R. Sennett, Fire Safety Services, circa January 1, 1986.
- C14. 1991 Calendar of 10/14 hour shift schedule.
- C15. Memorandum from Chief Larson to all Captains re: Article 8.3.10 of Contract, June 7, 1991.
- C16. Report of John Wittig, Acting Lieutenant, to Chief Larson, re: Accident Reports, February 6, 1991.
- C17. Summary of accidents November 17, 1989 through April 30, 1991.
- C18. Memorandum from Lieutenant Michael Kortelis to Chief Larson re: Accident Involving Ladder No.4, March 25, 1988.
- C19. Summary of Overtime Expenditures, Albany Fire Department, January 1, 1989 to July 31, 1991.
- C20. Summary of Personal Leave Taken, August 1990 through July 1991.
- C21. Petition of Albany Fire Department to New York State Labor Industrial Board of Appeals against order to comply and penalty assessment, December 27, 1990.
- C22. Excerpt from Department of Labor, Occupational Safety and Health Administration, regulation 1910.132 and subsequent re: personal protective equipment.
- C23. Summary of Union Time Taken August 1990 through July 1991.

- C24. Summary of Military Leave Time Taken August 1990 through July 1991.
- C25. Copy of decision of Arbitrator Neil Breslin in PERB A90-450, Vacation Picks July 2, 1991 (duplicates U57).
- C26. Copy of news article from Albany Times Union, December 20, 1990.
- C27. Copy of Albany Permanent Professional Firefighters Association, Local 2007, Secretaries' Newsletter, October 1990.
- C28. Statistical data and opinion of Austin Sennett relating to work schedules, undated - circa Fall, 1991.
- C29. Copy of article from Work and Stress, (date illegible) "Performance, Alertness and Sleep After 3-5 Years of 12 Hour Shifts; A Follow-up Study", ROSA, National Institute for Public Safety and Health, Division of Biomedical and Behavioral Science.
- C30. Copy of article from Occupational Medicine, April - June 1990, "Intervention Factors for Promoting Adjustment to Night Work and Shift Work", ROSA, Bonnet, Bootzin, Eastman, Monk, Penn, Tepas, Walsh, Volume 5, No. 2, April - June 1990

II. POSITIONS OF THE PARTIES AND PANEL OPINIONS:

The Article references in this section rely upon the numbering in the Agreement between the parties for the period January 1, 1986 to December 31, 1988 which appears in the record as Joint Exhibit 10.

ARTICLE 1.4 - MANAGEMENT RIGHTS: The employer proposed adding additional paragraph, Article 1.4, specifically articulating what it views to be the scope of its management rights. A panel majority found no showing of prior unreasonable constraint on management's ability to exercise control attributable to the absence of such a clause from the prior

Agreement. Moreover, it was felt that introduction of any such language would require a detailed examination of existing established practices and procedures which might be inadvertently compromised by the inclusion of the proposed language and the proposal is therefore denied.

ARTICLE 2.1: This Article delineates paid holidays for members of the bargaining units. The expired Agreement provided for an identified 11 such holidays two of which were Lincoln's Birthday and Washington's Birthday respectively with all holidays being paid regardless of sick time or vacation. The Employer proposed elimination of holiday pay entitlement where the member is off duty on sick time or vacation at the time of the holiday. In addition, the City further sought a reduction in the total number of holidays from 11 to 10. The Employer specifically proposed the elimination of Lincoln's Birthday and Washington's Birthday, to be replaced by the addition of a single President's Day, and the addition of Martin Luther King day with deletion of Election Day. The Union proposed adding Martin Luther King's birthday as an additional day.

The Panel has denied the proposal to remove eligibility from persons who happen to be on sick leave or vacation when a holiday occurs, on the basis that firefighter's holidays provide an established segment of their compensation as holidays are actually taken as time off only if they happen to coincide with a day when the employee would be scheduled off duty in any case.

The Panel awards deletion of Washington and Lincoln's Birthday with the addition of Martin Luther King Day and Presidents Day. Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Election Day, Thanksgiving Day, Christmas Day, and New Year's Day will be retained as in the expired Agreement.

ARTICLE 2.2: The substance of Article 2.2 in the expired Agreement is nullified by the revision awarded in Article 2.1. The Employer proposal for a new 2.2 is awarded and shall read as follows:

2.2 Employees unable to work due to an on the job injury that qualifies for section 207-a benefits, shall be entitled to all holiday pay.

ARTICLE 2.3: The Employer had proposed redesignating Article 2.3 as Article 2.5 and adopting a new Article 2.3 which would limit paid holiday entitlement of persons on personal sick leave for the first 30 calendar days only. This proposal was considered in conjunction with the Employer proposal to add a provision 2.4 dealing with persons calling in sick on days immediately preceding or following a holiday. The Panel resolved the matter by denying the proposal relating to Article 2.3 and after some modification, adopted the proposal identified as 2.4. Article 2.3 of the successor Agreement shall read as it did in the expired Agreement as follows:

2.3 All holiday pay shall accumulate and be paid the first pay period in December of the year.

ARTICLE 2.4: A new Article 2.4 shall be added to Article 2 and shall read as follows:

2.4 A member of the bargaining unit who calls in sick the calendar day before, the day of, or the calendar day after a holiday listed in section 2.1 of this contract, shall not be paid for that holiday unless illness is verified in writing by a physician, however, such verification need not be obtained prior to the member returning to work. The bargaining unit member shall have the option of producing written verification of illness from either the Department Surgeon, which shall be at the City's sole expense, or from the member's personal physician, which shall be at the member's expense.

There are no further additions to Article 2.

ARTICLE 3.1.5: The Employer has proposed the addition of a provision acknowledging that uniformed members assigned to the headquarters, shall work an eight hour per day shift averaging 40 hours per week over the course of a year. This proposal merely codifies a long established practice and is granted subject to the explicit identification of the positions involved. 3.1.5 of the successor Agreement shall read:

3.1.5 Uniformed members assigned to the following headquarters position shall work an 8 hour per day shift, Monday through Friday, averaging 40 hours per week over the course of the year:

Fire Prevention	Quartermaster
Fire Investigation	Training Officer

ARTICLE 3.2: The Employer has proposed an addition to the provisions of this Article in the expired Agreement which would stipulate that compensatory time off must be taken within the calendar year earned and must be used before any personal days or switch of "Kelly Days."¹ In reviewing this matter, the Panel identified a number of potential administrative problems and inequities and, as a consequence, concluded the interest of the parties would be best served by retaining without modification the language of Article 3.2 as it appeared in the expired Agreement.

¹Kelly Days - Kelly days are non-work days built into the Firefighters's schedule to reduce his or her average workweek to 40 hours. A Firefighter working one day on and three days off is working 24 out of 96 hours or 25 percent of the total time. While a conventional 40 hour work week involving 40 hours of work in seven days to 168 hours represents non-duty time of 23.81 percent. In order to conform to the contractual and legal restrictions on the average length of the and work week as it is applied to Firefighters, the on-duty time would have to be reduced to 23.81 percent of the total elapsed time. This would equate to nominally 22.86 hours of work per tour of duty. As it is impractical to schedule on such a basis, the practice is for the Firefighter to work the 24 hour tour of duty and earn credit toward a non-duty day in the amount nominally of 1.14 hours or 1 hour 8.5 minutes per tour of duty. These credits will accrue to the equivalent of a full 24 hour duty tour off, about once every 21 duty tours. A similar situation arises with the 10/14 shift arrangement that the balancing or compensating days off are from tours of 10 or 14 hours averaging 12 hours.

ARTICLE 3.4: This provision of the expired Agreement obligated the Employer to make a reasonable effort, without exception, to call back off duty Firefighters for relief purposes even where mutual aid service by other departments was being

relied upon. The Employer proposed inclusion of an exception in cases where the mutual aid requires specialized apparatus not maintained by its own department. The Panel has ruled favorably upon this proposal and Article 3.4 of the successor Agreement shall state:

3.4 In extraordinary circumstances requiring a call for mutual aid there should also be a reasonable effort to call back off-duty Firefighters for relief purposes. This section shall not apply where the circumstances require specialized apparatus not maintained by the Department.

ARTICLE 3.5 THROUGH 3.55: These articles in the expired Agreement relate to overtime work and Kelly Days. The Panel has denied this proposal, but has determined that a new section Article 3.6, Pre-planned Overtime shall be incorporated in the successor Agreement. In the administration of the expired Agreement, pre-planned overtime was awarded on the basis of seniority. As a result, a relatively few most senior members of the unit worked most of the available overtime. One member worked for 10 1/2 consecutive 24 hour days, 8 of which were on overtime. On that month taken as a whole that same individual worked the equivalent of 25 24-hour days, 18 1/2 of which were on overtime (City Exhibit 11). In fact, in the entire month of July 1991, the individual experienced only 4 days in which he did not report for duty. This is a particularly heavy workload for a person who is working 24 hour days and we conclude that such

practices do not fairly serve the health interest of the individual or the public's safety entitlements. Moreover and not inconsequentially, it excludes less senior members of the unit overtime opportunities and concomitant earnings benefits. This problem will be addressed by awarding provisions covering pre-planned overtime which will appear as Article 3.6 in the successor Agreement. This provision will state as follows:

Pre-planned Overtime:

3.6.1 It is the purpose of this Article to establish a system for the equitable distribution of all pre-planned overtime hours among the members of the bargaining units. Pre-planned overtime assignments shall be made in accordance with the procedure set forth herein. Pre-planned overtime shall also include overtime necessitated by a member of the unit calling in sick.

3.6.2 Upon reasonable notice in writing to the Fire Chief, the Union will have the right to inspect all overtime records for the purpose of insuring that an equitable distribution of pre-planned overtime is being maintained. In addition to showing the number of overtime hours worked per member, such records shall reflect the names, times and dates of calls made to members for overtime assignment. It shall be the responsibility of each member of the bargaining unit to provide the department with a single current phone number and the department shall be required to phone only that number.

3.6.3 The procedures set forth herein, shall apply solely to pre-planned overtime, and shall not apply in the event of emergencies, in which event the fire department may depart from the procedure to seek bargaining unit members to work overtime regardless of seniority or prior overtime work.

However, any overtime worked by a bargaining unit member as a result of an emergency, shall be considered in determining whether or not the overtime is being equitably distributed.

3.6.4 An overtime list shall be established and maintained by the department for Firefighters, Lieutenants and Captains after members of the bargaining unit indicate to the department, in writing, either that they desire to be included, or not to be included, on the overtime list.

Members of the bargaining unit shall have the right to include or exclude their names from the overtime list on the first days of January, April, July and October of each year.

A member of the unit who has withheld his or her name from the overtime list shall be considered to have received an equitable distribution of the overtime during the period of time that his or her name remains off the list. The overtime list, which shall be updated once quarterly, pursuant to this schedule, shall be promptly forwarded by the department to the union.

3.6.5 New hires shall have the opportunity to add their names to the overtime list immediately upon the expiration of their probationary period, regardless of the time of the

year. Names of bargaining unit members shall appear on the overtime list.

3.6.6 Pre-planned overtime shall be offered by the fire department to members on the overtime list on the basis of rank seniority and by rotation. A member of the bargaining unit who declines a pre-planned overtime, shall be charged as if he or she had accepted it.

ARTICLE 3.6.7: This article has been provided to be applied in lieu of creating a job call-in for an extra person or for paying an equivalent amount of time to the individual. It shall state as follows:

3.6.7 Where a member of the bargaining unit is on vacation, line-of-duty sick leave or personal sick leave, or cannot be located or is inadvertently passed over the by department, then, that member of the bargaining unit shall be given first preference for the next available pre-planned overtime which occurs at the conclusion of vacation, after sick or injury leave or after the member of the bargaining unit has been contacted.

3.6.8 No member of the bargaining unit shall be assigned pre-planned overtime when the result would be that the member would work in excess of twenty four (24) consecutive hours.

3.6.9 Pre-planned overtime for all or any part of the holidays enumerated in Article 2.1 of this Agreement shall

be exempted from the procedure for the equitable distribution of pre-planned overtime set forth herein.

3.6.10 All Firefighters, Lieutenants or Captains who volunteer and work pre-planned overtime assignments on all or part of any holidays enumerated in Article 2.1 hereof, shall receive a "no count" for such work periods for purposes of the equitable distribution of pre-planned overtime procedure. Rank seniority alone shall control for purposes of determining which volunteers shall work such pre-planned overtime on the enumerated holidays. Request for holiday overtime volunteers for these holidays shall be initiated by the Department not less than seven (7) days prior to any enumerated holiday and a member of the unit wishing to volunteer to work the holiday shall do so not less than seventy two (72) hours prior to the commencement of the holiday. However, these time limits shall not apply to overtime necessitated by someone calling-in sick.

ARTICLE 3.5 THROUGH 3.55: These Articles in the expired Agreement limit the members' options as to the number of Kelly Days on which the member may opt to work. The Union sought deletion of this provision. In its deliberations on this matter, the Panel granted a modification in pension entitlement identified as section 302 (9) D of the New York State Retirement and Social Security Plan as Article 29.4, on condition that these Union proposals be withdrawn, to which the Union designee

consented.

ARTICLE 3.7 Mutuals: The Panel views favorably a proposal to provide members with the option of utilizing a limited number of mutual exchanges. A mutual exchange is an arrangement wherein two individuals exchange a duty tour with one another. Such an exchange between two twenty four hour schedule people would constitute two mutuals but if two ten/fourteen people were involved the exchange would involve three mutuals. Such exchanges were viewed as mechanisms for permitting individuals to deal with special transient needs without adversely affecting the Department's operations. Article 3.7 of the successor Agreement will state:

3.7 Mutuals: Each member of the bargaining unit shall be entitled to ninety six (96) hours of mutual exchanges of duty with other unit members of the same rank (i.e. Firefighter, Lieutenant or Captain) provided however, that no such exchange shall result in a member of the unit working in excess of twenty four consecutive hours. Such entitlement is per calendar year, and unused mutuals shall not be carried over into the following year.

ARTICLE 5.1: This Article deals with retroactive pay due for out of grade work and which, under the expired Agreement, became effective for all hours worked once a Firefighter has worked out of grade for 4 or more hours. The Union proposal

relating to this Article sought to remove the 4 hour qualification requirement and was found to be unjustified. The proposal is therefore denied.

ARTICLE 7.2: This Article stipulates that seniority shall prevail at all times in making selections among interested personnel in the bargaining unit. The Employer sought to modify this clause to exempt staff and support positions from its coverage. The panel supported the Union view that there was no showing of justification for such a change that its implementation would create opportunities for or the appearance of favoritism in selecting persons to fill staff and support positions. The proposal is therefore denied. However, since it is the intent of this award to implement the provisions of Article 3.6.1 through Article 3.6.10, and the provisions of Article 7.2 notwithstanding, the language of Article 7.2 will be modified to so state. This Article in the successor Agreement shall state as follows:

7.2 Seniority to Prevail. Seniority shall prevail at all times in the Department of Fire with the exception of awarding of pre-planned overtime under the provisions of Article 3.6 of this Agreement which shall be implemented with the provisions of this Article notwithstanding. Further, it is recognized that the public safety shall not be jeopardized through artificial constraints resulting from the application of the principle of strict seniority.

ARTICLE 8.2.2: This Article in the expired Agreement specified the use of a special seniority list consisting of the names of Firefighters living in a geographical area described as an eight (8) mile radius about the location of Engine No.10. The Employer sought a new geographic definition, as the Engine No.10 location referred to has been shut down since the Agreement was originally drafted. On review, it was determined that the Employer's concerns could be addressed by substituting the term "Police Division 1" for "Engine No.10" and that the term "headquarters" should be substituted for "the Central Fire Station" in the successor Agreement. Therefore Article 8.2.2 of the successor Agreement will state as follows:

8.2.2 When the Chief determines that the public safety requires a more immediate response, the Chief may recall by using a special seniority list which will be maintained at Headquarters and which will contain the names of those Firefighters who live within an eight (8) mile radius of the location of Police Division 1 in the City of Albany. The City agrees to supply the Union with a copy of said special seniority list upon demand and to supply the Union with any updated versions.

ARTICLE 8.2.3 THROUGH ARTICLE 8.2.11: These were new clause proposals by the Employer designed to treat with the problem of pre-planned overtime. The Panel's determinations relating to this concern are set forth in Article 3.6 Pre-planned Overtime.

ARTICLE 8.3: This Article in the expired Agreement deals with the filling of vacancies within rank. The Employer proposed a modification of the language of 8.3.2 which would limit the filling of permanent vacancies on the basis of seniority to only line biddable positions. The Firefighters proposed a change in Article 8.3.10 dealing with intracompany changes wherein they sought to remove the expressed right of a Firehouse Captain to effect transfers between platoons within his company. The Panel found no persuasive support for either proposal and determined that Article 8.3.2 of the expired Agreement shall be incorporated in the successor Agreement without modification.

ARTICLE 8.3.6: This Article in the expired Agreement deals with the filling of temporary vacancies of a short term nature. The Employer sought to modify this Article by filling on a rotating basis and providing the department with the option of selecting junior employees over senior eligible individuals under certain special conditions. The Panel concluded it was unprepared to assess the potential impact of the proposed changes and in view of the questions extant, the Employer withdrew the proposal.

ARTICLE 8.3.7: This provision in the expired Agreement deals with inverse seniority and its implementation where the bidding procedure fails to fill a temporary vacancy. The Employer proposed deletion of this provision in conjunction with

a proposal for a new provision which will become 8.4.2 in the successor Agreement. [There is a numbering anomaly in the expired Agreement which when corrected will designate the former Article 8.4 as 8.4.1.] The proposal to delete Article 8.3.7 is denied.

ARTICLE 8.4.2: This provision provides a procedure for temporary filling of an absent officer's position by a Firefighter and will state as follows:

8.4.2 In the event of an Officer's unanticipated absence, not to exceed three (3) working days, the Senior Firefighter shall be in charge of the company. The Senior Firefighter may defer to a Junior Top Grade Firefighter.

It is the intent of the Panel that the Senior Firefighter's compensation for the period during which he is serving a higher grade pursuant to the terms of this Article shall be as stipulated in Article 5.1 of the Agreement.

ARTICLES 8.7 AND 8.8: The Employer proposed deletion of these Articles dealing with procedures to be employed in reductions in force and in filling newly created positions and proposed to substitute two new Articles similarly numbered which the Panel found to be without sufficient justification and determined that both Articles 8.7 and 8.8 of the expired Agreement shall be incorporated in the successor Agreement without revision.

ARTICLE 8.9. This is a new Article proposed by the Employer which provided that schedules may be temporarily changed to coincide with Departmental training schedules. The Employer's concern was identified as relating to the training or recertification of Emergency Medical Technicians (EMTs) and/or Paramedics. The Panel concluded this matter was best covered elsewhere in the Agreement, specifically in Articles 30.7 and 30.9 of the Agreement. The proposal was treated with on that basis.

ARTICLE 12.1: Article 12.1 of the expired Agreement deals with the selection and apportionment of vacation. The Employer has proposed that it advance issuing notice of commencement of vacation pick procedures the first week of October rather than in November as in the past and that it require completion of the pick procedure by November 15 rather than December 8 as in the past. It seeks also to limit further the number of members who may be on vacation simultaneously, reducing from 12 to 6 members per day, exclusive of Paramedics assigned to paramedic units. In the case of Paramedics, it proposes to reduce from 12 to 6 the number of members be permitted off on any day. The Panel concluded there was justification for the implementation of the revised pick date proposal but found itself mired in seemingly bewildering complexities in attempting to assess the soundness and workability of the proposed simultaneous number limitations. As a consequence, the Employer withdrew the proposal to modify

the permissible simultaneous numbers in favor of consideration in future negotiations. The revisions awarded are limited to pick procedures and Article 12.1 of the successor Agreement will be modified to that extent as follows:

12.1 Vacations shall be apportioned throughout the year. Notice of commencement of a vacation pick procedure shall be given in the first week of October, preceding the year in which the vacation is to be taken, and the vacation pick procedure shall be completed by November 15 of said year. The City agrees that 12 members per shift, including Battalion Chief, but excluding paramedics assigned to paramedic units, shall be allowed to pick vacations and to be off on vacation at the same time. This will be true irrespective of the "banking" provisions of Section 12 and irrespective of any other reason why other members may be off. Thus, if a member picks a particular vacation day, but then decides to "bank" and work it, this member is not counted as one of the twelve (12).

The second paragraph of Article 12.1 in the expired Agreement shall appear in the successor Agreement without revision or modification.

ARTICLE 12.4: Article 12.4 of the expired Agreement was the subject of an Arbitration Hearing before Arbitrator Neil Breslin (C25, U57 Exhibits) and was involved with interpreting the definition of a work day or work shift in Albany's situation where both 24 hour shift assignments and 10/14 shift assignments

are in place. The Panel determined that the application of the definition is peculiar to the matter addressed in the Breslin arbitration and even if not, is, in effect, a part of the contract which would be referenced by the parties in any case. It was therefore concluded that there was no need to revise the Agreement language and Article 12.4 of the expired Agreement will appear in the successor Agreement without amendment or modification.

ARTICLE 12.6: The City proposal was to limit the unused vacation days which may be received upon separation, to the banking limit. Under the expired Agreement the employee was entitled to receive additional monies through the inclusion of an unused prior year vacation time and time earned while on 207-a, disability leave. The Union maintains the provision of the expired Agreement was negotiated as quid pro quo for other concessions and that its members should not now be deprived of the benefit.

The Panel has determined that long-term 207-a General Municipal Law Leave constitutes an exceptional condition but otherwise rejects the proposal to modify. As a "housekeeping" measure we shall renumber Section 12.6 to 12.6.1, but it shall otherwise appear in the successor Agreement with its language unamended or modified from that of the expired Agreement. However, the award will also provide for the inclusion of a new paragraph 12.6.2 which is to state as follows:

12.6.2 Firefighters who are unable to work due to an injury or illness placing them on long-term section 207-A General Municipal Law leave, for two years or more shall receive a maximum unused vacation entitlement of two years allowance. The Firefighter shall in addition be paid any portion of the 240 hour bank referred to in Article 12.9 of the Collective Bargaining Agreement which was earned prior to being placed on Section 207-A, General Municipal Law leave.

ARTICLE 12.8 VACATIONS: Article 12.8 of the expired Agreement set forth vacation entitlements for various lengths of service. The Employer has proposed reductions in those entitlements which the Panel finds to be unjustified through a review of comparable practice in other jurisdictions. It does, however, find that the Article should properly be numbered Article 12.8.1 and therefore, Article 12.8 of the expired Agreement will appear in the successor Agreement unmodified except for being renumbered 12.8.1. Article 12.8.1 of the expired Agreement will be renumbered Article 12.8.2. in the successor Agreement but shall otherwise be unamended.

ARTICLE 15.1 - SALARIES: This award will incorporate general salary increase of five percent (5%) per annum effective January 1, 1991 and January 1, 1992. The underlying rationale is discussed herein under Appendix B, Salary Schedule. Appendix B

stipulates the salary schedule after inclusion of rank differentials and EMT/Paramedic compensation. Article 15.1 of the successor Agreement shall state:

15.1 Salaries shall be as stipulated in Appendix "B" hereto.

ARTICLE 15.2 - LONGEVITY PAY: Article 15.2 of the expired Agreement deals with longevity pay. Articles 15.2.1, 15.2.2 and 15.2.3 refer to prior interim conditions which have been satisfied and now, having been obviated, shall be deleted. The City has proposed replacement of the established longevity pay system with a phase out plan under which each employee would receive a declining percentage of longevity payment he or she received in 1990 until all longevity payments are eliminated by 1995. In place of the lost longevity monies, the Employer seeks to provide an educational allowance which would replace the longevity payments in their entirety in 1995. The Union has sought retention of the established longevity system and to lower the 20 year step to an 18 year step. It seeks also to increase the amount payable by \$250.00 for each step in the salary schedule in each year of the contract. The Panel views the Employers proposal as innovative, but it does not find sufficient justification to order its inclusion in the new Agreement. The proposal finds no adequate support for the Union's proposal to lower the 20 year eligibility to the 18th year. It does however find justification for an increase of longevity payments on the basis of comparable practice. The successor Agreement will

provide increments approximating those of the Albany Police Department in a new section 15.2.1 which will read as follows:

15.2.1 Each employee shall have added to his annual salary the following sums after the completion of 5, 10, 15 and 20 years of service respectfully:

<u>Length of Service</u>	<u>Effective Date</u>	
	<u>1/1/91</u>	<u>1/1/92</u>
5 years	\$ 700	\$ 900
10 years	\$ 900	\$1,100
15 years	\$1,150	\$1,350
20 years	\$1,450	\$1,650

ARTICLE 15.2.4. Article 15.2.4 of the expired Agreement shall be renumbered 15.2.2 but shall otherwise appear in the successor Agreement without additions or modifications.

ARTICLE 16.2. This provision of the expired Agreement stipulates that either the Fire Chief or the Fire Commissioner must show the Union his or her reason for not appointing or promoting the top name on a promotional list. Since there is no Fire Commissioner position, the Employer has sought deletion of reference thereto and the Panel has granted same. Thus Article 16.2 of the successor Agreement shall read as follows:

16.2 If other than the top name on an entrance or promotional list is selected for appointment or promotion, the Fire Chief must show the Union, in writing, his reasons for not appointing or promoting the top name. This section shall not be subject to a grievance procedure.

ARTICLES 18.2, 18.4, 18.5, 18.6. All these articles relate to release time for Union officials on Union business and all were the subject of Union proposal to increase the time allowances. The Panel found insufficient justification for so awarding and denies these demands.

ARTICLE 19.4. Article 19.4 defines a grievance and the Employer proposes to modify it so that questions of eligibility entitlement under General Municipal Law 207-a would be excluded. This would compel reliance on an Article 78 proceeding. The Panel finds insufficient justification to support this proposal and denies same.

ARTICLE 19.5. Article 19.5 outlines the steps of the Grievance Procedures wherein the Union proposes to eliminate the Mayor's step from the Grievance Procedure. The Employer proposes a revision which would limit the permissible period for submission to arbitration to 30 days from the date on which the Mayor's reply is received or was required to be received whichever is earlier. The Panel finds that neither of the parties has been disadvantaged by the language of the expired Agreement and the proposal is therefore denied.

ARTICLE 20.4 - 21.4 and 21.4.3 deal with arbitration panels. The Union has proposed eliminating the arbitrator panel and adopting an ad hoc selection procedure. The Panel was provided

no justification for this proposal and it is denied.

ARTICLE 21.1.4 - 21.5: This section deals with disciplinary procedures and the City has proposed language changes in which would permit implementation of the provisions in a proposed new Article 21.5. The step proposal would provide the Employer with wider latitude in imposing progressive penalties. The Panel found that the classes of offenses were not precisely definable and that the arrangement would unreasonably undermine the powers of the Union in a critical aspect of its domain and both proposals are therefore denied.

ARTICLE 24: Article 24 of the expired Agreement provides for the creation and operation of a Safety Committee constituted of a Union and Employer representative. The Union has proposed modification of this provision to provide for a larger committee with more specifically defined assignment and powers and with binding arbitration to be employed in the event of an unresolvable dispute. The Employer has vigorously opposed the inclusion of a binding arbitration provision under any condition, citing it as an arrogation of the powers vested in the City Administration by a non-elected arbitrator.

The Union presented extensive testimony and supporting evidence relating to this proposal, all of which provided rationale for change. However, the Employer in response established that the complaints brought before the Panel, in the hearing stage of this proceeding, had never been communicated to

the Fire Chief and that the Fire Chief was not only in agreement with the Union's position, but that he had already taken steps to adopt their proposals. The Panel believes it would be improper for it to impose sweeping changes on the basis that an existing system is not working when there is a substantial likelihood that the existing system can work if the Union employs its existing communication options. In view of this finding, the Panel is constrained to deny the proposal and Article 24 of the expired Agreement shall be incorporated in a successor Agreement without modification or amendment.

ARTICLE 27.1: Article 27.1 relates to Health Insurance and the Employer has proposed a number of changes therein. In view of the point in time at which the present Panel is meeting, the dimensions of its burdens, the non-retroactive nature of such a proposal and the imminence of new negotiations, this proposal was withdrawn.

ARTICLE 28.1: This provision of the expired Agreement stipulates that a copy of the contract shall be provided by the City to each member of the Department. The Employer has proposed the addition of a provision which would require that the cost of publishing be borne equally by the City and the Association. The Panel, noting that the parties are co-equal parties to the Agreement, sustains the proposition that the Union should participate equally in the publishing costs. Article 28.1 of the

successor Agreement shall read as follows:

28.1 A copy of the contract shall be supplied by the City to each member of the Department. The cost of publishing the contract shall be borne equally by the City and the Association with all printing being performed in a Union shop and with the letting of contracts for such work being subject to the legal restrictions regulating the Employer's solicitation of bids and placement of orders.

ARTICLE 29.3: The Employer has proposed the inclusion of an Article 29.3 which would require employees joining the 384-D Special Retirement Plan to contribute to the cost by sustaining a phased-out salary reduction over a period of five years. This provision pre-existed the expired Agreement and was eliminated by the interest arbitration panel which resolved the impasse in that instance. The present Panel finds no justification for re-instituting the provision and the Employer's proposal is therefore denied.

In consideration of changes made in Article 3 earlier, the parties have concurred in their determination to deride the pension option identified as Section 302 (9) D benefits. Accordingly, a new Article 29.3 shall be added to the successor Agreement and shall state as follows:

29.3 Concurrent with the effective date of this award, the City shall take those steps necessary to implement one year final average salary benefits set forth in Section 302 (9) D

of the New York State Retirement and Social Security Law.

ARTICLE 30 - LEGISLATIVE APPROVAL: This Article numbered 30 in the expired Agreement shall be renumbered to Article 32 in the successor Agreement but shall otherwise be without modification or deletions.

ARTICLE 31 - CONTINUATION CLAUSE: The Article in the expired Agreement shall be renumbered to Article 33 and modified by date corrections in the successor Agreement. Article 33 of the successor Agreement shall state as follows:

33.1 The terms and conditions of this Agreement shall continue until December 31, 1992, and for each succeeding year beyond that unless either party shall give notice, a minimum of sixty (60) days prior to the termination date of the agreement of its intention to seek modification of any of the terms of said Agreement.

33.2 Any grievance arising under the terms of this Agreement after December 31, 1992 shall be subject to the grievance procedure and binding arbitration provisions of Articles 19 and 20 of this agreement, which shall continue in full force and effect.

ARTICLE 32: The Employer proposes to add to the contract an Article 32 which properly sequenced will actually become Article 30 of the successor Agreement which in essence incorporates the

provisions which appeared in Appendix "D" of the expired Agreement. We focus here only on proposed changes employing the numbering designation of the successor Agreement (Article 30).

ARTICLE 30.1: Statement of Policy. This provision appears as Appendix "D" paragraph 1 of the expired Agreement and has been modified only by removal of prior caveat which stipulated that it was to be incorporated into the Collective Bargaining Agreement. Therefore, Article 32.1 of the successor Agreement shall states as follows:

30.1 Statement of Policy: Both the Employer and the Union recognize the importance of the EMS program and both parties are committed to the purposes of delivering this service at the highest levels of professional standards.

ARTICLE 30.2: Article 30.2 of the successor Agreement merely renumbers and repeats the definitions which appeared as D12 in the expired Agreement.

ARTICLE 30.3: Eligibility for Paramedic Program - This provision appears as D2 in the expired Agreement and shall be designated as Article 30.3 without modification in the successor.

ARTICLE 30.4: Selection Procedure Paramedic Program. This provision in the expired Agreement appears as Appendix "D3" and the proposed clause differs only in that it substitutes the

designation, "Any eligible Firefighter EMT" for "Eligible Firefighter" but further states that the individual shall be required to complete "Screening Procedures" rather than "REMO's Screening Procedures". In its concluding line it substitutes the term "Firefighter EMT's" for "Firefighters" and again substitutes "Screening Procedures" for "REMO's Screening Procedures". The Panel believes these proposed changes accurately reflect the intent of the parties and Article 30.4 of the successor Agreement shall therefore read as follows:

30.4 Selection Procedure: Paramedic Program - Upon notice from the Chief that the Department intends to enroll Firefighters in the Paramedic Certification Program, any eligible Firefighter EMT may apply by submitting a request in writing to the Chief. The Firefighter EMT submitting the request shall be required to complete the necessary screening procedures. The final selection from the program shall be made from among those Firefighter EMT's successfully completing the screening procedures and appointment shall be made by the Chief based upon seniority.

ARTICLE 30.6: This Article deals with the selection upon completion of training of Paramedics and as a final caveat references an interim operating procedure which is specified to be offered or provided that it is in effect up to December 31, 1985. That date is of course long past and the Employer's proposal is to strike that appendage from the clause. The Panel

is constrained to agree and Article 30.6 of the successor Agreement will therefore read as follows:

30.6 Selection Completion: Paramedics - Upon successfully completing all of the requirements and being certified by REMO and the State as a paramedic, a Firefighter shall be placed on the eligible list for his rank by seniority. Permanent vacancies shall be filled by canvassing the list starting at the higher placement. If no Firefighter on the list accepts the permanent vacancy, then the lowest person on the list will be assigned.

ARTICLE 30.9: This Article is concerned with EMT/Paramedic recertification and the City has proposed a change which would permit it temporarily to change EMT and Paramedic schedules to coincide with the Department's recertification training program. This matter was previously referenced in discussion of Article 8.9 herein. A Panel majority has concurred on the desirability of scheduling flexibility in order to complete recertification training for persons opting to receive such training under a REMO or Departmentally sponsored program and would not apply to persons who opt to complete recertification programs on their personal time through other qualifying programs. The Panel further agrees that the duration and frequency of the reassignment should be specified. Therefore, Article 30.9 of the successor Agreement shall state as follows:

30.9 Any certified Paramedic or EMT who opts to enroll in a REMO or Departmentally sponsored recertification program for a period of up to two weeks once in every three years shall be subject to temporary scheduling reassignment to coincide with the scheduling of the recertification program. All time spent in the recertification training sessions of either a Departmentally sponsored or REMO program shall be credited as hours worked. In all other respects, the provisions of this Article, which apply to initial certification shall apply to recertification.

It is the intent of Article 30.9 above to preserve the rights of those more senior members who are not required to certify as a condition of employment and who may elect to allow their recertifications to lapse.

ARTICLE 30.10: Article 30.10 is concerned with compensatory time off and the City has proposed changes permitting temporary changes in assignments to accommodate training schedules and further providing that compensatory time off earned in training sessions must be taken within the calendar year when it is earned. The rescheduling considerations have been addressed in formulating Article 30.9 above. The Panel's analysis of the second proposed change indicates that enforcement could become cumbersome particularly if the training program is conducted late in a calendar year. It does, however, recognize the desirability of satisfying compensatory time off entitlements within a

reasonable period of time and will incorporate in the successor Agreement language stipulating that the compensatory time off may be taken at any time upon reasonable notice to the Department, but in no case after more than one year. Therefore, Article 30.10 of the successor Agreement will read as follows:

30.10 Compensatory Time: All time spent in the EMS certification or recertification process which is in addition to a Firefighter's scheduled tour of duty, shall entitle the Firefighter to equivalent compensatory time off. The certification and recertification process includes all time spent in class, lab, emergency rooms, testing and required continuing education programs, but does not include self study. The compensatory time which the Firefighter earns under this Article may be taken at any time upon reasonable notice to the Department but in any case must be taken within one year after the conclusion of the training program provided that the public safety shall not be jeopardized by the Firefighter's absence from duty on that particular date. All Firefighters shall receive overtime pay for all time spent taking certification or recertification examinations.

ARTICLE 30.12: This proposal is identified in the Employer's proposal as 32.11 and actually refers to Appendix "D", paragraph 11 of the expired Agreement. It set forth the extra pay accruing to paramedics and EMT's as education allowances and the Employer is proposing to incorporate EMT and Paramedic pay

into the Employee's base salary. The Union has concurred in the desirability of such a change and its implementation will result in the deletion of paragraph 11 which otherwise would have become Article 32.12 in the successor Agreement.

APPENDIX B. SALARY SCHEDULE. Salary schedules are in the present as in most negotiations, a major point of contention. The Union has proposed an across-the-board increase of 25 percent for one year only indicating, in oral arguments at the hearing, that a second year increase of similar magnitude would be in order for a two-year decision. It argues that the City of Albany enjoys the strongest financial condition of any New York State municipality and that the requested increase is well within the City's means. In quantitative support of its position, the Union cites the increases in the Consumer Price Index for 1990 (Exhibits Union 1, Union 2, Union 3) showing an increase of nominally 6 percent. That much of an increase, it argues, would be required merely to maintain the purchasing power of the Firefighter, but that purchasing power it continues, was already below standards relative to the practice in comparable New York State communities. The comparable communities upon which the Union relies are Yonkers, Syracuse, Rochester and Buffalo, asserting that Albany properly should be compared with such cities because, due to the nature of its status as a State Capitol and government center, it has a large day time population. These make the burdens of the Albany Firefighter at

least comparable to those of the larger cities cited. Moreover, the Union emphasizes, their members shoulder even heavier burdens as is evidenced by the fact that Albany Firefighters made more runs in the 1990 calendar year than did Syracuse and Yonkers and made about half as many as Buffalo which is three times Albany's size (UEX46). The number for Rochester was not clear, but it appears to be about the equivalent of Albany's with a population normally twice as large. The average responses per company, the Union notes, were highest for Albany with Buffalo and Syracuse having only about three-quarters or less as many and Rochester and Yonkers having about 60 percent as many. It notes in addition that every new Albany Firefighter is required to be an EMS and that most others have qualified and that the percentage of EMS calls has been increasing steadily from about 65 percent of all calls in 1986 to about 72 percent of all calls in 1990. The total number of calls increased by about 41 percent over that period with virtually all of the increase being attributable to the upsurge in demand for EMS services (UEX12). The Union maintains the appropriateness of its inclusion as one of the big five cities outside of New York City, was recognized by the immediately preceding interest arbitration panel which developed the now expired Agreement. That Panel, the Union urges, explicitly recognized that Albany deserved to gain ground in terms of annual salary rates on the other four of the big five and that while it narrowed the differentials, it did not eliminate them and further adjustments are required at this time.

The Union charges the City improperly attempts to compare Albany with jurisdictions like Schenectady, Niagara Falls, Troy, Binghamton and Utica which are smaller and do not operate the extensive Basic Life Support (BLS) and Advanced Life Support (ALS) systems and are often burdened with financial difficulties from which Albany is totally free. The Union further argues that the rank differentials progressing from Firefighter to Lieutenant to Captain and Battalion Chief in the Albany Fire Department are markedly inferior to those provided in the remaining four of the big five cities and that further adjustment is mandated there as well. They specifically argue that the differential at the Lieutenant's rank should be increased by 3 percent, while that at the Captain's and Battalion Chief's ranks should be increased by 9 percent each, in order to bring Albany abreast of prevailing conditions in comparable jurisdictions. Finally, the Union argues, the Employer justifies its own inferior proposal partially by comparing base wages only, a practice which the Firefighters view to be unrealistic. By way of example, they note that Buffalo Firefighters receive lunch money totalling \$2,243.00 per annum which is, in fact, an addition to their basic compensation and to make a comparison excluding this factor from consideration is to conceal to some extent the magnitude of the underpayment to Albany Firefighters.

The Union further argues that Albany EMT's and paramedics provide premier medical emergency service which is unsurpassed, and perhaps unequalled, in any other jurisdiction and that the

pay received for this of \$600 per annum for EMT's and \$1500 per annum for paramedics is woefully inadequate. Moreover, the Union proposes that this payment be calculated as a percentage of base salary with EMT's receiving 3 percent and the paramedics receiving 6 percent which would raise the increments to \$1,032 and \$2,064 per annum respectively.

The City takes vigorous exception to the assertion that Albany's practice should be evaluated only against that of Buffalo, Rochester, Syracuse, and Yonkers. Indeed, it notes that it dissented from the prior arbitration award on the question of the very inclusion of Yonkers in the comparison standard. The City on the outset stipulates that it does not plead inability to pay and that it recognizes its obligation to provide fair and just compensation as measured against applicable, comparable practice. It proposes that an appropriate sample is provided by reliance upon eight other cities, namely, Niagara Falls, Rochester, Utica, Buffalo, Binghamton, Schenectady, Syracuse and Troy, all of which are upstate cities with paid fire departments and with mid-range populations. It absolutely rejects reliance upon practice in the City of Yonkers noting that it geographically borders the City of New York and must reflect the high housing and other costs which are characteristically found in the Metropolitan/New York area. The US Census Bureau, it notes, places Yonkers in the Metropolitan/New York City Standard Metropolitan Statistical Area and it further notes that Yonkers enjoys the benefits of its own City income tax. In its

comparison of 1990 practice, the Employer finds Albany entry level Firefighters to be paid \$3,000.00 per annum above comparable practice and, because Albany has yet to receive a 1991 increase, only \$1,039.00 below the average comparable practice for jurisdictions which have negotiated 1991 schedules. In comparing top grade Firefighters, Albany finds itself to be \$1,454.00 above the average for 1990 and only \$191.00 below for 1991. There salary data includes all of the cities in its sample with the exception of Syracuse, Buffalo and, of course, Albany. It provides similar comparisons with generally comparable results for Lieutenants and Captains. The Employer further contends these salary comparisons do not include the \$600 in EMT pay, which all new hirees receive as they must be EMT's as a condition of employment, along with all other certified EMT personnel. It further notes that Albany's EMT pay is the highest in the comparison group, approached only by Troy which pays \$70.00 per annum less. All others who do compensate, pay between \$200.00 and \$350.00 per annum, while Rochester, Buffalo, Syracuse and Schenectady, pay no EMT differentials at all. Albany offers a similar comparison for longevity payments relying upon these same 8 jurisdictions and concludes Albany already pays from about \$100.00 to roughly \$275.00 more than the other jurisdictions in this category.

A Panel majority subscribes to the Employer's view that ability to pay, no matter how generously financed, does not provide access to disproportionately large increases. It would

be better, perhaps, to refer to this criterion as the "inability to pay" consideration to be employed when a jurisdiction is financially unable to provide compensation at an established fair market level. The fundamental challenge is of course, objectively to determine where that compensation level lies as vastly different results can be obtained depending upon the jurisdictions selected for inclusion in calculating a reference average. The selection of the big five cities favors the Union's concept while the selection of upstate mid-range population cities provides stronger support for the Employer's views. In its post-hearing briefs, the Employer proposed that a fair approach might be to average all the comparables selected by both sides, namely, Yonkers, Syracuse, Rochester, Buffalo, Troy, Schenectady, Binghamton, Utica and Niagara Falls. The City does so for the year 1990 and in the case of top grade Firefighters finds the average for all the other municipalities in the group to have been \$31,747.00 while Albany's was \$32,520.00 or \$773.00 higher. Thus, it argues that Albany Firefighters were at a salary level exceeding that of the other municipalities by nominally 2.4 percent in 1990. By a parallel computation the City found the Fire Lieutenants to have been at a level nominally 1.6 percent above average than the Captains to have been at only 0.2 percent above average. We agree with the City's arithmetic but question the significance of an average which is calculated on an unweighted basis with the City of Buffalo, for example, which has a population of 328,000 people being accorded no

greater weight in the average than the City of Binghamton with 53,000 people. On the basis of the assumption that the size of a jurisdiction's fire department is in some way correlated with its population, we recalculated the average employing the City's salary figures and population statistics and found the weighted average for the 9 jurisdictions employed to be \$33,275.00 per year which is nominally 2.3 percent above the Albany average of \$32,520.00 for 1990. It is of course arguable that the larger communities tend to pay higher salaries and that weighing according to population size gives double emphasis to this phenomenon. We can appreciate that some marginal overstatement of the differentials may result from this phenomenon. A countervailing consideration is that at some of the smaller communities, which are experiencing more stringent financial constraints, have tended to depress salary levels and they exert less impact on the average because of the low weight accorded them in the calculation. Unfortunately, while arithmetic is a precise discipline, the presumptions employed in selecting the numbers to be employed, is somewhat subjective and the resultant answers flowing from calculations, reflect a margin of latitude and judgement. However, we are persuaded that the 1990 variance between Albany and all of the other cited municipalities was in a range of possibly as much as + or - 2 percent of Albany practice. Differences on that order may well be offset by differences in certain fringe benefits such as sick leave buy-out where Albany enjoys one of the better benefits or differences in rank

differentials, longevity increments and the like. These are phenomena which Mr. Hynes included in his analysis appearing as Union Exhibit 19. We have further considered both the absolute level and trends in the Bureau of Labor Statistics CPI Index. On this basis, we conclude the appropriate salary adjustment to keep the compensation of members of this unit nominally abreast of comparable practice should be 5 percent in each of the 2 contract years 1991 and 1992 respectively. The salary schedule which will appear as Appendix "B" in the successor Agreement will reflect this determination.

We are further petitioned to review rank differentials. We have done so by relying upon the 1990 salary levels cited by the City in its post-hearing briefs (pages 29-30) for top grade Firefighters, Lieutenants and Captains in the same jurisdictions as was cited in the salary comparison above. We also calculated the ratios for Rochester, Syracuse and Buffalo, the jurisdictions for which the Union expressed a preference. We found close agreement between the two reference groups and concluded that the appropriate differential for Lieutenants should be 1.135 times the top grade Firefighters rate and for Captains 1.21 times the top Firefighters rate and the salary schedule which will appear as Appendix "B" in the successor Agreement will reflect those findings.

In the case of Battalion Chiefs, we determined that the differential between Battalion Chiefs and Captains in the Albany Fire Department was 11.1 percent in 1990 and the Panel determined

that said ratio shall be preserved in the successor Agreement.

We turn next to EMT and Paramedic pay. The parties are in agreement about the desirability of implementing the Employer's proposal to fold EMT and Paramedic compensation into the salary schedule. It will then be paid as part of salary distributed over the pay days of the year, rather than in a lump sum as in the past.¹ The remaining issue was the persistent difference between the parties as to the magnitude and form which EMT/Paramedic pay should take. The Employer's proposal was to retain compensation at existing levels of dollars per annum with an equivalent of \$600.00 per annum for EMT's and \$1,500.00 per annum for Paramedics. The Union proposal was to pay at percentage levels of 3 and 6 percent respectively, which, if adopted, at the inception of the new Agreement, would increase EMT rates by 72 percent and Paramedic rates by nominally 38 percent. The record before the Panel fails to provide justification for increases of such magnitudes nor does it persuade that the payment should be on a percentage basis. We do, however, recognize the heavier work burden borne by EMT's and Paramedics and the added risks assumed in performing these services where an exchange of blood or exhaled aerosol may transmit an infection. In considering these factors the Panel has concluded that EMT compensation should be raised to \$800.00 per annum with Paramedic compensation going to \$2,000.00 per annum effective retroactively to January 1, 1991. These added amounts are folded into the salary schedule set forth which will

¹ The EMT/Paramedic pay component will be included in the hourly rate for all purposes.

appear as Appendix "B" in the successor Agreement. Appendix "B" of the salary schedule of the successor Agreement shall states as follows:

Appendix "B"
Salary Schedule - Local 2007

<u>Rank</u>	<u>Eff. Jan. 1, 1991</u>	<u>Eff. Jan. 1, 1992</u>
Firefighter 1st Grade	27,315	28,680
" " " EMT	28,115	29,480
" " " Paramedic	29,315	30,680
Firefighter 2nd Grade	29,023	30,474
" " " EMT	29,823	31,274
" " " Paramedic	31,023	32,474
Firefighter 3rd Grade	30,731	32,268
" " " EMT	31,531	33,068
" " " Paramedic	32,731	34,268
Firefighter 4th Grade	32,439	34,061
" " " EMT	33,239	34,861
" " " Paramedic	34,439	36,061
Firefighter Top Grade	34,146	35,853
" " " EMT	34,946	36,653
" " " Paramedic	36,146	37,853
Lieutenant	38,756	40,693
Lieutenant EMT	39,556	41,493
Lieutenant Paramedic	40,756	42,693
Captain	41,317	43,382
Captain EMT	42,117	44,182
Captain Paramedic	43,317	45,382

Appendix "B"
Salary Schedule - Local 2007-A

<u>Rank</u>	<u>Eff. Jan. 1, 1991</u>	<u>Eff. Jan. 1, 1992</u>
Batallion Chief	45,862	48,154
Batallion Chief EMT	46,662	48,954
Batallion Chief Paramedic	47,862	50,154

The Union proposed also, special pay differentials for members assigned to an anticipated Hazardous Materials Service

and for members assigned to existing Arson Investigator & Fire Prevention Units. The Panel in discussion of these issues determined they were best left to upcoming negotiations and the proposals are denied.

ARTICLE 31. Non-Job Related Sick Leave. Article 34 of the prior agreement corresponds to Article 31 of the successor. Members of the Bargaining Unit are provided with unlimited sick leave. In the immediate prior interest arbitration, the Employer in anticipation of possible abuses of the sick leave entitlement, proposed limiting them to a specified number of sick leave days earned per year with caps on accruals. The Union persuaded that there was no evidence or history of abuse and the Panel awarded, in lieu of limitations, a group incentive system to encourage the prudent use of sick leave on a Bargaining Unit wide basis. In substance, it set up a Sick Leave Bank or pool into which a deposit of 28,320 hours (1180 24 hour days) would be deposited each year. Any unused sick leave bank hours at the end of the year are divided equally among the entire Bargaining Unit on a per person basis and are credited to the individual Employee's Vacation Buy-Back Bank which is redeemable upon retirement. This additional entitlement is paid notwithstanding the preexisting 240 hour cap on the Vacation Bank. The plan also exempts from draw down, any sick time taken because of catastrophic illness which is implicitly defined as incidents or episodes of greater than 5 day's duration.

The Employer, in the present proceeding, seeks termination of the sick leave bank questioning its effectiveness and fairness. It notes that it relies upon peer pressure but imposes no reduction in entitlement on persons who utilize sick time. It questions whether peer pressure is effective in the first place, but suggests that even if it is, it will be rendered ineffective where large amounts of time are taken and little or no monies will be left to be distributed among members at the end of the year. It further notes the 1180 days initial entitlement in no way correlates with the size of the work force and that there are no provisions for adjusting the allowance should the number of persons in the unit rise or fall. The City argues that the elimination of the bank and the adoption of its proposed Article 34 which would terminate the unlimited sick leave practice and provide for sick leave on an earned basis. This, it predicts, will encourage responsible use of sick time by individuals and assure a more equitable distribution of sick leave pay resources among members. The Union, agreeing with an Employer contention that neither it nor the City ever sought the establishment of the bank, also argues that it never sought any change in the sick leave provision and has never been provided with any evidence of abuse of this prerogative by members. It argues that the Sick Leave Bank was provided and implemented in response to a management request and that it would be improper for the present arbitration panel to overturn the findings of a recent predecessor.

The Panel has not been provided with evidence of sick leave abuse but does acknowledge that unlimited sick leave is a valuable benefit probably not enjoyed by a majority and that the Sick Leave Bank is a unique benefit which may meaningfully add to an individual's retirement monies. The Employer has focused attention on these comparatively ample benefits as countervailing factors in discussions of certain Union demands where they, in fact, exerted an influence on the determination. The City has implied the Bank system is irreparably flawed in that it provides for the 1180 day allowance without regard to the number of persons in the work force. This appears to be an appropriate concern; however, it is not a fatal flaw as adjustments may be negotiated when conditions warrant without abolishing the plan. Moreover, we are sympathetic to the view that an interest arbitration panel should not engage in anything approaching the casual overturning of recently negotiated or awarded contractual provisions. The Panel does not perceive itself to be an omniscient alternative to collective bargaining, but rather a final stage adjunct wherein limited and most significant impasse items should be resolved. The Panel will therefore award that the Sick Leave Bank shall be preserved in the successor agreement without addition or modification and shall appear as Article 31.1 in the successor Agreement. Article 31.1 shall state as follows:

31.1 Personal Sick Leave - To act as a group incentive to encourage responsible use of sick leave, the parties shall

provide that the City maintain a personal sick leave bank of 1100 24 hour days at the start of each calendar year, to be drawn down on an hourly basis by individual personal sick leave use, not to include catastrophic individual cases of greater than five days duration. At the end of each calendar year, the bank's remaining hours shall be divided equally among the entire bargaining unit on a per-person basis and credited to each individual Employees Vacation Buy-Back, without regard to the vacation bank's 240 hour cap. This provision is not intended to affect treatment of Section 207-A On the Job Injuries or Illnesses.

ARTICLE 3.1.2. Work Schedules: The Union has proposed deletion of Article 3.1.2. It was negotiated into the Agreement in 1986 and is applicable only to members of the Unit hired after January 1, 1987, to whom we shall refer as "newly hired people." The Article enabled the Employer to implement a fractional shift schedule; specifically, a so-called 10/14 schedule in place of the established 24 hour schedule. Employees on the 24 hour schedule report for a 24 hour duty tour upon completion of which they are off duty for 3 calendar days before reporting again. Under the Albany fractional shift or 10/14 arrangement, the typical Firefighter's schedule would be to report for 10 hours of day duty followed by 14 hours off duty through the night followed by another 10 hours of day duty, after which the Firefighter is off duty for 24 hours. Thereafter, the member reports for a 14

hour night shift followed by a 10 hours of day time off duty before reporting back for another 14 hour night tour at the conclusion of which the Firefighter is off duty for 96 consecutive hours. The conventional 24 hour schedule operates on a 4 day cycle, while the fractional shift as practiced by Albany constitutes an 8 day cycle. An early first effort to implement the fractional shift arrangement was abandoned when it was found that there were too few post-January 1, 1987 hirees practically to permit its institution. However, by May of 1990, the Department determined that it had in its ranks a sufficient number of newly hired people to render the plan feasible and it advised the Union of its intent to implement. It did so as of September 1, 1990 with the change then affecting nearly half the members but none of the officers all of whom were hired prior to January 1, 1987. The Union had grieved against the imposition of the 10/14 schedule shortly after the Fire Chief's announcement of intention to implement in May of 1990, but the grievance was ultimately dismissed as untimely. It was, however, followed by an avalanche of other grievances and following implementation, in September of 1990, another grievance protesting against that action was submitted. There followed a further cascade of individual grievances against the alleged imposition of unsafe working conditions and training decrement. In October of 1990, the Union, in its newsletter (City Exhibit 27), asserted that "we are in effect, at war with the City. . ." over the issue of the 10/14 schedule. The confrontation continues and the issue has

been brought before this interest arbitration panel for resolution.

The Union argues that the 10/14 schedule is a failed experiment and should be discontinued forthwith. The Union specifically identifies the following problems:

1. The intermixing of 24 hour and 10/14 scheduled people results in repeated and frequent changes in team composition. This impedes training and the ability to develop into an effective and efficient working team which is particularly crucial for Paramedics and EMT's who are constantly treating with life threatening situations.
2. The supervision problem is exacerbated as all officers by virtue of service are exempt from duty on the 10/14 schedule and all work 24 hour duty tours.
3. While other jurisdictions cited for comparison purposes do have fractional shift work schedules in place, and that particularly includes all the other four of the big five cities outside of New York, none of these cities offer the Basic Life Support (BLS) or Advanced Life Support (ALS) services which are provided by the Albany Department. Some of the other cited jurisdictions do offer such services, albeit at a much lower level and, among those, reliance upon 24 hour work schedules for Paramedics predominate.
4. The simultaneous operation of 24 hour and 10/14 hour

schedules gives rise to profound staff deployment complications greatly increasing the number of "details" in the AFD. A "detail" is the transfer for all or part of a duty ^Tfour of a person from one assigned work station to another to cover for understaffing at the second location. The Union urges that this is disruptive of work routines and exacerbates safety and effectiveness problems by placing individuals in unfamiliar jobs and locations.

5. The 10/14 schedule is more exhausting because it leads to sleep deprivation, particularly on the third and fourth days of the work cycle when the member must work two 6 p.m. to 8 a.m. (14 hour) shifts in sequence with a single 10 hour daylight period in between in which to rest. Sleeping during daylight hours is difficult in any case, but the difficulty is exacerbated when the body is allowed only a short period in which to effect adjustments which are naturally resisted by its circadian rhythms. Sleep deprivation brings on a syndrome of afflictions, both short and long term which tend adversely to affect interpersonal relationships, family life, physical health, work performance and accident propensities.
6. The Union has provided firm scientific proof of the inferiority of the 10/14 schedule relative to the 24 hour schedule and the Employer has provided no

scientific refutation of the Union position or justification for its own.

7. The 10/14 shift has been shown to be so hurtful and demoralizing to the Firefighters and their families as to preclude achievement of the high level of morale which would give rise to more effective operations and, on the contrary, has ensured that labor relations between the parties will continue on a path of deterioration.

The Employer's response is as follows:

1. Sleep problems inhere in firefighting work with both 24 hour and 10/14 or other fractional shifts. If the employee's sleep is disrupted at night in the fire station, the inhibiting conditions will apply equally to members working either arrangement.
2. The percentage of Albany's Fire Department responses of an emergency medical nature now constitute about 75 percent of all calls and that percentage is likely to increase. In effect, the EMT's and Paramedics bring the emergency room to the patient where they in fact perform their functions as an extension of the emergency room physician with whom they are in contact via radio.
3. A minority of other city fire departments now work 24 hour shifts and none of the other big five cities do so.

4. There is a demonstrated preference among Firefighters to attempt to compact their work hours together so as to maximize the number of uninterrupted off-duty hours which, in many cases, are spent on second jobs and/or leisure activities.
5. Worker preference is an important consideration in setting work schedules, but it cannot be the only factor as safety needs must also be considered. Government regulations regularly seek to protect the public interest by limiting the hours that locomotive crews, truck drivers, pilots, and emergency room physicians may work without rest periods of designated durations.
6. The Albany Fire Department has evolved into a vastly different institution than when it was essentially a standby force that answered only a few calls per shift. This situation has not prevailed since the 1960's and 1970's.
7. New York State regulations which have the force of law limit the permissible emergency room physician's work day to not more than 12 consecutive hours. With Albany EMT/Paramedics functioning as the physician's remote extension, their fatigue functionally becomes the physician's as well.
8. While a member's activities on his or her personal time are chosen at the individual's discretion, the evidence

adduced was to the effect that many of these people are actively engaged in outside jobs where scheduling becomes more difficult while working a 10/14 shift. Further, in any case, it contributes to added fatigue and potential sleep deprivation. Albany disputes the quality or relevance of putatively scientific evidence introduced by the Union through the testimony of a psychologist and a number of published articles. It notes that the psychologist is a specialist in grief counseling and has seen only one Albany Firefighter, a procedure which commenced even before that Firefighter was working the 10/14 schedule. With respect to the articles, it raises a number of questions about the nature of the surveys and the degree of objectivity inherent in the responses which were analyzed.

12. It asserts that Albany is the primary employer of the Union's members providing them with the major share of their income, their health insurance and other valuable benefits. It maintains the City is entitled to the undiluted allegiance and commitment of the Employee which should not be compromised by concern over secondary or even tertiary employment and activities.

In May of 1985, the City of Albany engaged the services of Fire Safety Services of Hanover, Massachusetts, which commenced a six-month study by a five-member study team of the structure and

operation of the Albany Fire Department. It issued, over the name of its President, Austin R. Sennett, a voluminous report (hereinafter referred to as the Sennett Report) summarizing and making recommendations respecting the Department's management methodology and structure, its scope of services, its equipment, its deployment of physical and human resources and its measures of effectiveness. The implementation of many of those recommendations has resulted in the building of new and the abandonment of old facilities, the acquisition of new equipment, the adoption of training programs, and shifts in the organizational structure among other changes. One of these was the negotiation and implementation of the 10/14 or fractional shift schedule which Sennett recommended for consideration on the basis that the person on say his or her 18th hour of duty, must necessarily confront an arising work task in a state of fatigue or reduced effectiveness. The Sennett Report further proposed that the 10/14 schedule, in bringing employees into more regular attendance at the fire stations, would reinforce the sense of identification and involvement in the individual's primary employment. Frequent daytime presence, it said, provides opportunity for more effective training. Firefighters would be at their stations for 2 consecutive day time shifts in every 8 day cycle. Mr. Sennett and the members of his team were not, as the Union charges and as Sennett himself concedes, knowledgeable about the psychological or physiological mechanisms of human fatigue. His testimony suggests he recommended fractional shifts

for Albany because he had observed and experienced successful employment in other jurisdictions. The Union, of course, challenges reliance upon claimed comparability because of the special nature of the Albany Fire Department involvement in BLS and ALS activities.

At this juncture, the Panel's concern must be with the relative merit of fractional versus 24 hour shifts in the Albany Fire Department. It is specifically with whether the putatively superior properties or characteristics of the 24 hour schedule are, as the Union asserts, so patently clear as to establish that the Panel's obligation to the public interest and equitable balancing of the parties' concerns dictates abolition of the fractional shift schedule. Our inferences are as follows:

1. The parties in negotiating the 1986 agreement committed to the implementation of a 10/14 shift at the Employer's discretion subject only to the limitation that its pre-1987 membership would be exempt from the impact of its adoption. We think the Union ratification of that Agreement carried with it an obligation constructively to participate in the implementation of the schedule when the time came to do so. Ratification imposes obligations on both parties to subscribe to all the provisions of the Agreement which include; both, those they adore and those they abhor.
2. The newly employed members of the Department also, in

effect, entered into agreements on an individual basis when they joined the Department and were made aware of the fact that they would be subject to assignment on a 10/14 schedule. Upon joining the Union they became, or should have become, aware that the obligation was consistently recognized and annunciated in the Collective Bargaining Agreement. They, no less than the Union as a body, are obligated to accept and abide by all terms of the Agreement irrespective of their affection or disaffection for specific articles or provisions.

3. The avalanche of grievances growing out of the announcement of the intent to implement the 10/14 schedule predated any direct experience with actually working on the schedule. The intensification of the opposition, which immediately accompanied the implementation of the fractional shift, cannot be attributed to a siege of adverse work experiences such as the Union has cited in its declaration of failure. At most, one may infer that the Union and the affected members anticipated such deleterious consequences and in such subjective circumstances, expectations and conclusions are likely not to be independent events.
4. The Union has repeatedly cited as comparables, the four other of the five major non-metropolitan cities and it is significant that each of these jurisdictions relies

upon fractional shift scheduling. While it is true, as the Union emphasizes, that none of the other four departments operates a hybrid system wherein 24 hour and 10/14 hour schedules intermesh. But, this was a foreseeable consequence of the good faith negotiations and agreement between the parties limiting reassignment to fractional scheduling to newly hired people. The agreement therefore obligated the employer to tolerate the generally predictable complications and it imposed a similar onus to cooperate in facilitation accommodation on the Union and its members. Individual reactions to being detailed and options exercised by officers in deploying their staffs appear not to have consistently recognized this requirement.

5. The Union argument that the other four of the big five are not comparable because of their significantly lower level of involvement in providing BLS and ALS services, is accurate but it truly militates against the Union position in that the members delivering those services are called upon more frequently and are afforded fewer sustained sleep periods during the night hours while on duty at the station. This is implicitly recognized in the Norfolk, Virginia practice where dual role paramedics as in Albany, work only the first or second half of their duty tour, that is, 12 hours on paramedic assignment with the other 12 being spent on a fire

suppression assignment.

6. The Union concedes that concerns about being able to continue outside job activities were a factor in rank and file opposition to the fractional shift at the outset, but it insists, it has since been found that the fractional shift schedule does not effectively negate such options. The existing and rising opposition, it asserts, is based solely upon the increasingly evident and accumulating deleterious effects of sleep deprivation and safety concerns. However, the anecdotal testimony of Union witnesses, suggested that the 10/14 schedule did impose impediments which would not have been present had more frequently occurring several day long off-duty periods been available.
7. The survey articles offered by the Union and to which the Employer objected were admitted into evidence on the basis of relevance, but recognizing their hearsay character and concomitant value. Their value was confined to showing that the express preferences of survey interviewees were properly interpreted. None of the survey articles provided objective measures of error frequency, work decrement or fatigue itself, although the latter is particularly difficult to measure.
8. Each of the parties offered testimony and/or exhibits

attributable to authoritative sources based upon objective research. These included blood pressure and chemistry as indices of stress and they were correlated with subjective responses. One of the more extensive studies (Cex28), studied twelve hour shift schedules and relied upon objective measurements of speed of movements, grammatical reasoning, physical reaction time to single and paired stimuli, auditory reaction times, accuracy of hand movements and the like. With a high level of consistency, these studies found performance of twelve hour workers to be inferior to those of eight hour counterparts. They also found that these shift workers incurred moderate sleep deficits on shift work whether twelve or eight hours. These results, which were confirmed over by retesting after a five year period, support the inferences that shift work is performed only at a price by people who must overcome the restraints of their endogenous circadian clocks. They further support the conclusion that the effects of fatigue accumulate as the duty tour proceeds and, although the investigation was limited to twelve hour stints, we are intuitively prone to the view that the worker's energies will not be best restored by working yet an additional twelve hours. Of course, this would not be precisely comparable to a firefighters 24 hour tour as the factory workers

studied were not permitted sleep periods. However, even modestly long uninterrupted sleep periods have and are likely further to diminish in frequency with the growing emphasis on BLS and ALS services and one may, we believe, reasonably relate the study findings to a 24 hour duty tour. The impact of the physical realities understandably, may be understated, probably subconsciously, by people who prefer working one day with a three day off-duty period immediately following.

9. Fatigue has a long term and short term component. A brief spell of relaxation often enables recovery from short-term stress, but longer term fatigue requires a prolonged period of relaxation and sleep within which period an individual's energies are regenerated. However, fatigue also has a subjective ingredient, the presence of which is illustrated by the fact of a worker feeling totally spent at the end of a day's labor, may with no evident physical performance impairment, proceed to a recreational activity like bowling, or softball or dancing. The author of Union Exhibit #33, Is Moonlighting Mired in Myth, proposes that Moonlighting on a second job may reduce worker anxiety and contribute to restoration and improved performance on the main job. The article de-emphasizes the monetary aspects but it seems reasonable that a person for whom the utility of the added earnings

outweighs the disutility of the added work, would offer such a view. We are inclined to concur in the Union's inference that the rank and file opposition to the fractional shift is at this juncture driven not by organizational attitudes, but rather by what has developed into the execration of the schedule among the affected members. However, the Panel must rely upon more extensive criteria than inferred popularity or unpopularity in reaching its determination. A paramount criterion among these is to maintain an awareness and sensitivity to the mission of the Agency, to which both parties owe obedience, namely, to provide the highest achievable level of public safety to Albany's citizens.

10. Both parties have, through testimony and documentary evidence, provided authoritative and objective information about the circadian rhythm and its implications for work patterns. The substance of this phenomenon is that mankind, in adapting to life on this planet, has acquired an internal clock which compels him to synchronize his activities essentially with a 24 hour rotation of the earth. This cycle is divided into periods during which man is actively awake and another during which he recovers and regenerates his energy through a period of sustained sleep. Evolution or adaptation has predisposed humankind to sleep during

the nocturnal hours and work during the daylight hours following the conclusion of the sleep period. Since man's natural clock cycle is slightly longer than 24 hours, he may adjust forward or backwards for an hour or two with little stress. He may also implement or achieve more pronounced resetting of the internal clock by making repeated sequentially small adjustments over a lengthy period of time. It has been found that he cannot accommodate to frequent abrupt changes without incurring stresses which are likely to give rise to a syndrome of symptoms which are associated with sleep disorder. Persons afflicted with sleep disorder evidence degraded physical conditions and adversely modified emotional and social behavior.

11. Both the 24 hour and split shift arrangement compel the individual Firefighter to defy the dictates of his or her circadian clock. The 24 hour shift does not, however, require the abrupt resetting of this clock as the exposure to the change is short lived and is followed by 3 off-duty 24 hour days during which rest and recovery may be achieved. The fractional shift arrangement imposes sustained changes which do compel resetting. This is particularly difficult on the last 2 of the 4 work day cycles when the individual must work 2 consecutive 14 hour night shifts with only 10 intervening daylight hours in which to recover. This

difficulty is exacerbated as the individual is not naturally adapted to sleeping during daylight hours and has not been able to slowly, over a period of time, adjust his internal clock to permit him to do so.

12. The specific fractional shift arrangement in place in Albany also embodies serious faults, in the view of both Union and Management expert witnesses. However, the views expressed were peculiar to the Albany 10/14 schedule and there was persuasive support of the proposition that fractional shifts need not be categorically so afflicted.

The dissention over this issue is profound and unyielding. The Panel is irreconcilably split. The Chairperson in the early periods of deliberation by the Panel recessed the procedure and remanded the issue to the parties for further review and negotiation in the hope that, through further bargaining, they could close the gap, or at the very least, offer the Panel less extreme proposals from which it could make a responsible choice. It was our hope that emotions and attitudes had adjusted to the point where a renewed effort might prove productive. The parties did in fact provide alternatives, but they were either insubstantial or on further review by the Panel, found to be likely to lead the Panel into broad encroachments on other aspects of the Agreement were it to attempt implementation. The Panel was reluctant to tinker with the broad aspects of an Agreement which the informed parties have carefully crafted to

fit their needs over a period of many years and which now reflects accommodations to many needs and the resolution of many problems of which the Panel is unaware and with which it has not been charged to treat. In our view, an interest arbitration panel, is not a soi disante omniscient authority appointed to supplant or operate in lieu of collective bargaining. Rather, it is a final stage which is designed to facilitate the workings of collective bargaining by smoothing out those last few stubbornly resistant asperities separating the parties. We are charged by the empowering legislation under which we are proceeding to consider and give weight to prior conditions. We read this as an admonishment against undertaking to remake the entire fabric of the agreement in a single sitting. One may reasonably expect Collective Bargaining Agreements substantially to change with changing conditions over the passage of time, but we contemplate that such changes will evolve through cautious negotiation rather than erupt through an interest panel's explosive intervention.

A Panel majority has reluctantly concluded that this troublesome issue is not amenable to inventive solution. While we recognize the validity of some criticisms of the 10/14 schedule we are not persuaded that they are beyond resolution. The severity of problems arising out of Albany's unique hybrid plan will diminish with the inevitable increase in the number of new people. Further, a measure of constructive negotiations may conceivably bring about immediate improvements. We are constrained to deny the Union proposal and we can but offer what

is perhaps the least effective and appreciated of the implements in our armamentarium; hope and counsel.

Our hope is for recognition that the optimization of outcomes in collective bargaining comes about by maximizing gains and minimizing loses. One must come to peace with the fact that all aspirations will not be realizable. Long established traditions sometimes must yield to change. One such past change, the effects of which are reverberating here, was the adoption of 40 hour work week for firefighters. Another, clearly well underway and growing in importance, is the commitment to BLS and ALS services. We believe and urge the termination of confrontational tactics with the parties adopting an open minded and continuing review of the scheduling issue. They should not, in the writer's view, rule out experimentation where it may be indicated and they should continue to seek solutions during the tenure of the Agreement when their attentions are not diverted to other contract reopening concerns. We believe confinement in categorical straight jackets ill serves the public interest. While the panel's powers to treat with the issue in an informed, constructive and responsible manner, have been depleted, the Union's and the Employer's have not.

AWARD

The undersigned constituting the duly designated Interest Arbitration Panel in the above-captioned matter, find and award as follows:

A. Term. The term of the parties' successor Agreement to that which expired on December 31, 1990 shall be of two years duration commencing January 1, 1991 and expiring December 31, 1992.

B. The successor Agreements shall embody all terms and conditions of the expired Agreement and the Award in PERB IA88-42 with the exception of such modifications, amendments, additions or deletions as are awarded herein and are as follows:

1. Article 2.1 of the successor shall state as follows:

2.1 Each uniformed member of the Department of Fire shall, regardless of sick time or vacation period, be paid for the following eleven (11) holidays:

New Year's Day	Labor Day
Martin Luther King Day	Columbus Day
Presidents' Day	Election Day
Memorial Day	Veteran's Day
Independence Day	Thanksgiving Day
	Christmas Day

2. Article 2.2 of the successor Agreement shall state as follows:

2.2 Employees unable to work due to an on the job injury that qualifies for section 207-a benefits, shall be entitled to all holiday pay.

3. Article 2.3 of the successor Agreement shall state as follows:

2.3 All holiday pay shall accumulate and be paid the first pay period in December of the year.

4. Article 2.4 is a new Article and shall state as follows:

2.4 A member of the bargaining unit who calls in sick the calendar day before, the day of, or the calendar day after a holiday listed in section 2.1 of this contract, shall not be paid for that holiday unless illness is verified in writing by a physician, however, such verification need not be obtained prior to the member returning to work. The bargaining unit member shall have the option of producing written verification of illness from either the Department Surgeon, which shall be at the City's sole expense, or from the member's personal physician, which shall be at the member's expense.

5. Article 3.1.5 is a new Article and shall read as follows:

3.1.5 Uniformed members assigned to the following headquarters position shall work an 8 hour per day shift, Monday through Friday, averaging 40 hours per week over the course of the year:

Fire Prevention	Quartermaster
Fire Investigation	Training Officer

6. Article 3.4 of the successor Agreement shall state as follows:

3.4 In extraordinary circumstances requiring a call for mutual aid there should also be a reasonable effort to call back off-duty Firefighters for relief purposes. This section shall not apply where the circumstances require specialized apparatus not maintained by the Department.

7. Article 3.6 Pre-planned Overtime is a new provision made up of 10 sub-paragraphs designated 3.6.1 through 3.6.10 respectively which shall read as follows:

3.6.1 It is the purpose of this Article to establish a system for the equitable distribution of all pre-planned overtime hours among the members of the bargaining units. Pre-planned overtime assignments shall be made in accordance with the procedure set forth herein. Pre-planned overtime shall also include overtime necessitated by a member of the unit calling in sick.

3.6.2 Upon reasonable notice in writing to the Fire Chief, the Union will have the right to inspect all overtime records for the purpose of insuring that an equitable distribution of pre-planned overtime is being maintained. In addition

to showing the number of overtime hours worked per member, such records shall reflect the names, times and dates of calls made to members for overtime assignment. It shall be the responsibility of each member of the bargaining unit to provide the department with a single current phone number and the department shall be required to phone only that number.

3.6.3 The procedures set forth herein, shall apply solely to pre-planned overtime, and shall not apply in the event of emergencies, in which event the fire department may depart from the procedure to seek bargaining unit members to work overtime regardless of seniority or prior overtime work. However, any overtime worked by a bargaining unit member as a result of an emergency, shall be considered in determining whether or not the overtime is being equitably distributed.

3.6.4 An overtime list shall be established and maintained by the department for Firefighters, Lieutenants and Captains after members of the bargaining unit indicate to the department, in writing, either that they desire to be included, or not to be included, on the overtime list. Members of the bargaining unit shall have the

right to include or exclude their names from the overtime list on the first days of January, April, July and October of each year. A member of the unit who has withheld his or her name from the overtime list shall be considered to have received an equitable distribution of the overtime during the period of time that his or her name remains off the list. The overtime list, which shall be updated once quarterly, pursuant to this schedule, shall be promptly forwarded by the department to the union.

3.6.5 New hires shall have the opportunity to add their names to the overtime list immediately upon the expiration of their probationary period, regardless of the time of the year. Names of bargaining unit members shall appear on the overtime list.

3.6.6 Pre-planned overtime shall be offered by the fire department to members on the overtime list on the basis of rank seniority and by rotation. A member of the bargaining unit who declines a pre-planned overtime, shall be charged as if he or she had accepted it.

3.6.7 Where a member of the bargaining unit is on vacation, line-of-duty sick leave or personal sick leave, or cannot be located or is inadvertently

passed over the by department, then, that member of the bargaining unit shall be given first preference for the next available pre-planned overtime which occurs at the conclusion of vacation, after sick or injury leave or after the member of the bargaining unit has been contacted.

3.6.8 No member of the bargaining unit shall be assigned pre-planned overtime when the result would be that the member would work in excess of twenty four (24) consecutive hours.

3.6.9 Pre-planned overtime for all or any part of the holidays enumerated in Article 2.1 of this Agreement shall be exempted from the procedure for the equitable distribution of pre-planned overtime set forth herein.

3.6.10 All Firefighters, Lieutenants or Captains who volunteer and work pre-planned overtime assignments on all or part of any holidays enumerated in Article 2.1 hereof, shall receive a "no count" for such work periods for purposes of the equitable distribution of pre-planned overtime procedure. Rank seniority alone shall control for purposes of determining which volunteers shall work such pre-planned overtime on the enumerated holidays. Request for holiday overtime volunteers for these holidays shall be initiated by the

Department not less than seven (7) days prior to any enumerated holiday and a member of the unit wishing to volunteer to work the holiday shall do so not less than seventy two (72) hours prior to the commencement of the holiday. However, these time limits shall not apply to overtime necessitated by someone calling-in sick.

8. Article 3.7 Mutuals is a new Article which shall state as follows:

3.7 Mutuals: Each member of the bargaining unit shall be entitled to ninety six (96) hours of mutual exchanges of duty with other unit members of the same rank (i.e. Firefighter, Lieutenant or Captain) provided however, that no such exchange shall result in a member of the unit working in excess of twenty four consecutive hours. Such entitlement is per calendar year, and unused mutuals shall not be carried over into the following year.

9. Article 7.2 of the successor Agreement shall state as follows:

7.2 Seniority to Prevail. Seniority shall prevail at all times in the Department of Fire with the exception of awarding of pre-planned overtime under the provisions of Article 3.6 of this Agreement which shall be implemented with the

selecting from the four persons standing highest on such list.

12. Article 8.4.2 is a new provision and shall state:
8.4.2 In the event of an Officer's unanticipated absence, not to exceed three (3) working days, the Senior Firefighter shall be in charge of the company. The Senior Firefighter may defer to a Junior Top Grade Firefighter.

13. Article 12.1 of the successor Agreement shall state as follows:

12.1 Vacations shall be apportioned throughout the year. Notice of commencement of a vacation pick procedure shall be given in the first week of October, preceding the year in which the vacation is to be taken, and the vacation pick procedure shall be completed by November 15 of said year. The City agrees that 12 members per shift, including Battalion Chief, but excluding paramedics assigned to paramedic units, shall be allowed to pick vacations and to be off on vacation at the same time. This will be true irrespective of the "banking" provisions of Section 12 and irrespective of any other reason why other members may be off. Thus, if a member picks a particular vacation day, but then decides to "bank" and work it, this member is not counted as one of the twelve (12).

Paramedics will be allowed to pick vacations separately, and they shall not be counted as part of the twelve (12) members allowed off per shift. The City agrees to allow at least one (1) paramedic off per shift in addition to the twelve (12) other members allowed off and irrespective of the "banking provisions" of Section 12 and irrespective of any other reason why other paramedics may be off.

14. Article 12.6.1 of the successor Agreement shall state:

12.6.1 The employer will compensate an employee at separation from service for unused vacation leave, Kelly Days, longevity, holiday pay, which were accrued prior to separation provided, that the employee gives at least five (5) calendar days' written notice of termination. Firefighters on 207-a pay will receive holiday pay and vacation entitlement as in the past.

15. Article 12.6.2 is a new provision as shall state:

12.6.2 Firefighters who are unable to work due to an injury or illness placing them on long-term section 207-A General Municipal Law leave, for two years or more shall receive a maximum unused vacation entitlement of two years allowance. The Firefighter shall in addition be paid any portion

of the 240 hour bank referred to in Article 12.9 of the Collective Bargaining Agreement which was earned prior to being placed on Section 207-A, General Municipal Law leave.

16. Article 12.8.1 of the successor Agreement embodies without modification the terminology of Article 12.8 of the expired Agreement.

17. Article 12.8.2 of the successor Agreement embodies the language of 12.8.1 of the expired Agreement.

18. Article 15.1 of the successor Agreement shall state:

15.1 Salaries shall be as stipulated in Appendix "B" hereto.

19. Article 15.2.1 of the successor Agreement shall state as follows:

15.2.1 Each employee shall have added to his annual salary the following sums after the completion of 5, 10, 15 and 20 years of service respectfully:

<u>Length of Service</u>	<u>Effective Date</u>	
	<u>1/1/91</u>	<u>1/1/92</u>
5 years	\$ 700	\$ 900
10 years	\$ 900	\$1,100
15 years	\$1,150	\$1,350
20 years	\$1,450	\$1,650

20. Article 15.2.2 of the successor Agreement shall state:

15.2.2 Longevity payments will be made once a year on the firefighter's anniversary date.

21. Article 15.2.3 of the expired Agreement shall be deleted.

22. Article 16.2 of the successor Agreement shall state as follows:

16.2 If other than the top name on an entrance or promotional list is selected for appointment or promotion, the Fire Chief must show the Union, in writing, his reasons for not appointing or promoting the top name. This section shall not be subject to a grievance procedure.

23. Article 28.1 of the successor Agreement shall state:

28.1 A copy of the contract shall be supplied by the City to each member of the Department. The cost of publishing the contract shall be borne equally by the City and the Association with all printing being performed in a Union shop and with the letting of contracts for such work being subject to the legal restrictions regulating the Employer's solicitation of bids and placement of orders.

24. Article 29.3 is a new provision in the successor Agreement and shall state:

29.3 Concurrent with the effective date of this award, the City shall take those steps necessary to implement one year final average salary

benefits set forth in Section 302 (9) D of the New York State Retirement and Social Security Law.

25. Article 30 of the successor Agreement which shall supplant with modifications Appendix "D" of the expired Agreement shall provide as follows:

30.1 Statement of Policy: Both the Employer and the Union recognize the importance of the EMS program and both parties are committed to the purposes of delivering this service at the highest levels of professional standards.

26. Article 30.2 Definitions:

30.2 For the purpose of this section the following definitions shall apply:

- a. firefighter shall include the ranks of lieutenant and captain;
- b. EMS means the Emergency Medical Service of the Albany Fire Department;
- c. EMT means an emergency medical technician as certified by the state of New York and the Regional Emergency Medical Organization (R.E.M.O.). The term includes EMT levels 1, 2, and 3, also known as EMT intermediate;
- d. Paramedic means a paramedic certified by the state of New York and R.E.M.O. at the EMT P or EMT 4 level.

27. Article 30.3 Eligibility for Paramedic Program:

30.3 To be eligible for the paramedic certification program, the firefighter must be a certified EMT.

3. Selection Procedure: Paramedic Program

Upon notice from the Chief that the Department intends to enroll firefighters in the paramedic certification program, any eligible firefighter may apply by submitting a request in writing to the Chief. The firefighter submitting the request shall be required to complete R.E.M.O.'s screening procedures. Final selection for the program shall be made from among those firefighters successfully completing R.E.M.O.'s screening procedures and appointment shall be made by the Chief based upon seniority.

28. Article 30.4 Selection Procedure:

30.4 Selection Procedure: Paramedic Program -

Upon notice from the Chief that the Department intends to enroll Firefighters in the Paramedic Certification Program, any eligible Firefighter EMT may apply by submitting a request in writing to the Chief. The Firefighter EMT submitting the request shall be required to complete the necessary screening procedures. The final selection from the program shall be made from among those Firefighter EMT's successfully

completing the screening procedures and appointment shall be made by the Chief based upon seniority.

29. Article 30.5 Selection Procedure; EMT Program:

30.5 Upon notice from the Chief that the Department intends to enroll firefighters in the EMT program, any firefighter may apply by submitting a request in writing to the Chief. Selections shall be made by seniority.

30. Article 30.6 Successful Completion Paramedics:

30.6 Successful Completion: Paramedics

Upon successfully completing all of the requirements and being certified by R.E.M.O. and the state as a paramedic, a firefighter shall be placed on the eligible list for his rank by seniority. Permanent vacancies shall be filled by canvassing the list starting at the highest placement. If no firefighter on the list accepts the permanent vacancy, then the lowest person on the list will be assigned, provided however, that the interim operating procedure attached as Exhibit "A" will be in effect up to December 31, 1995.

31. Article 30.7 Term:

30.7 Each Paramedic and EMT agrees to faithfully serve in that capacity for the duration of his

certification period, which is currently three (3) years. A firefighter will not be prejudiced in any way by service in the paramedic unit with respect to promotions in rank.

32. Article 30.8 Expiration of Certification:

Paramedic

30.8 Upon the expiration of a firefighter's paramedic certification, he shall be temporarily assigned to any company in the Chief's discretion until such time as he successfully bids into another job opening.

33. Article 30.9 Recertification

30.9 Any certified Paramedic or EMT who opts to enroll in a REMO or Departmentally sponsored recertification program for a period of up to two weeks once in every three years shall be subject to temporary scheduling reassignment to coincide with the scheduling of the recertification program. All time spent in the recertification training sessions of either a Departmentally sponsored or REMO program shall be credited as hours worked. In all other respects, the provisions of this Article, which apply to initial certification shall apply to recertification.

34. Article 30.10 Compensatory Time:

30.10 Compensatory Time: All time spent in the

EMS certification or recertification process which is in addition to a Firefighter's scheduled tour of duty, shall entitle the Firefighter to equivalent compensatory time off. The certification and recertification process includes all time spent in class, lab, emergency rooms, testing and required continuing education programs, but does not include self study. The compensatory time which the Firefighter earns under this Article may be taken at any time upon reasonable notice to the Department but in any case must be taken within one year after the conclusion of the training program provided that the public safety shall not be jeopardized by the Firefighter's absence from duty on that particular date. All Firefighters shall receive overtime pay for all time spent taking certification or recertification examinations.

35. Article 30.11 Books & Tuition

30.11 The Department shall pay the full cost or the tuition and required books for this program.

36. Article 31.1 Sick Leave Bank

31.1 Personal Sick Leave - To act as a group incentive to encourage responsible use of sick leave, the parties shall provide that the City maintain a personal sick leave bank of 1100 24

hour days at the start of each calendar year, to be drawn down on an hourly basis by individual personal sick leave use, not to include catastrophic individual cases of greater than five days duration. At the end of each calendar year, the bank's remaining hours shall be divided equally among the entire bargaining unit on a per-person basis and credited to each individual Employees Vacation Buy-Back, without regard to the vacation bank's 240 hour cap. This provision is not intended to affect treatment of Section 207-A On the Job Injuries or Illnesses.

37. Article 32 Legislative Approval

32.1 Except as otherwise provided for herein, it is agreed by and between the parties that any provision of this Agreement requiring legislative action to permit its implementation by amendment of law, or by providing the additional funds therefor, shall not become effective until the appropriate legislative body has given approval.

38. Article 33 Continuation Clause

33.1 The terms and conditions of this Agreement shall continue until December 31, 1992, and for each succeeding year beyond that unless either party shall give notice, a minimum of sixty (60) days prior to the termination date of the

agreement of its intention to seek modification of any of the terms of said Agreement.

39A. Appendix "B" 2007

Appendix "B"
Salary Schedule - Local 2007

<u>Rank</u>		<u>Eff. Jan. 1, 1991</u>	<u>Eff. Jan. 1, 1992</u>
Firefighter 1st Grade		27,315	28,680
"	" " EMT	28,115	29,480
"	" " Paramedic	29,315	30,680
Firefighter 2nd Grade		29,023	30,474
"	" " EMT	29,823	31,274
"	" " Paramedic	31,023	32,474
Firefighter 3rd Grade		30,731	32,268
"	" " EMT	31,531	33,068
"	" " Paramedic	32,731	34,268
Firefighter 4th Grade		32,439	34,061
"	" " EMT	33,239	34,861
"	" " Paramedic	34,439	36,061
Firefighter Top Grade		34,146	35,853
"	" " EMT	34,946	36,653
"	" " Paramedic	36,146	37,853
Lieutenant		38,756	40,693
Lieutenant EMT		39,556	41,493
Lieutenant Paramedic		40,756	42,693
Captain		41,317	43,382
Captain EMT		42,117	44,182
Captain Paramedic		43,317	45,382

39B. Appendix "B" 2007-A

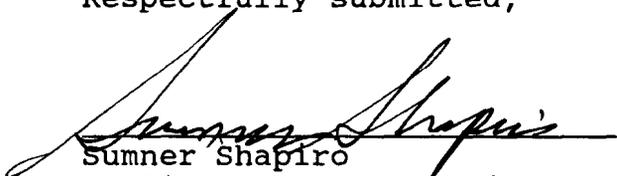
Appendix "B"
Salary Schedule - Local 2007-A

<u>Rank</u>	<u>Eff. Jan. 1, 1991</u>	<u>Eff. Jan. 1, 1992</u>
Batallion Chief	45,862	48,154
Batallion Chief EMT	46,662	48,954
Batallion Chief Paramedic	47,862	50,154

40. The above are inclusive of all modifications to the expired Agreement which shall appear in the successor Agreement as determined by a Panel majority with the exception of deletions which are discussed and outlined in the Opinion section of this Opinion and Award.

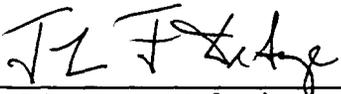
Delmar, New York
March 6, 1992

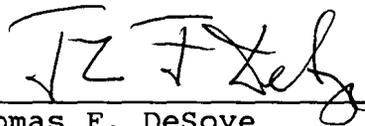
Respectfully submitted,


Sumner Shapiro
Public Member and Chairperson

STATE OF NEW YORK)
) ss.:
COUNTY OF ALBANY)

Sworn to before me this 18 day of March, 1992.


Notary Public *qualified in Westchester Co.
Commission expires 8-31-93*
4662609


Thomas F. DeSoye
Employee Organization Member
Dissenting in Part (see attached)

STATE OF NEW YORK)
) ss.:
COUNTY OF ALBANY)

Sworn to before me this 18 day of Mar, 1992.


Notary Public

VINCENT J. McARDLE, JR.
Notary Public, State of New York
Qualified in Albany County
No. 2597448
Commission Expires April 30, 1993

Vincent J. McArdle, Jr.

Vincent J. McArdle, Jr.
Public Employer Member
Dissenting in Part (see
attached)

STATE OF NEW YORK)

) ss.:

COUNTY OF ALBANY)

Sworn to before me this 18 day of March, 1992.

JZ F. DeLoe

Notary Public

Qualified in Westchester Co.

Commission expires 8-31-93

4662609

Employee Organization Member's Dissent

I am constrained to dissent from so much of the award of this panel which fails to delete §3.1.2 of the current agreement, and fails to make such other modifications as are necessary to restore all members of the bargaining units to the 24 hour shifts which all members of the unit hired prior to January 1, 1987 are contractually entitled to work.

The record compiled in this hearing contains much evidence on the issue of work shifts. I am convinced that, taken as a whole, this evidence militates in favor of an Albany Fire Department in which all line firefighters and officers, be they EMTs, Paramedics, or not, work the twenty-four (24) hour work schedule which, prior to September, 1990, was the rule. I am also convinced that an Albany Fire Department with all of its personnel working twenty-four (24) hour shifts, is a better department than the one which exists under the current "two schedule" system.

In coming to this conclusion, I have considered citizen safety, the health and safety of unit members, administrative efficiency, economic impact, and last, but not least, the morale of the firefighters.

My fellow panel members concede, indeed the Fire Department administration and its expert witnesses concede, that the 10/14 work schedule currently in place in Albany is flawed. The Fire Department Surgeon testified that in his opinion, the Albany 10-14 work schedule which the City imposed results in sleep deprivation for those firefighters who work it, and can be anticipated to result in an increased number of job related accidents.

Those members of the unit hired prior to January 1, 1987 continue to work the twenty-four (24) hour schedule, which is administratively incompatible with the 10-14 schedule. Moreover, the convergence of the two schedules destroys all notions of teamwork which are essential to traditional firefighting methods and the delivery of EMS.

Without contest, members of the department testified at length before us to objective, and subjective matters, which reveal that all members of the unit, including those on the twenty-four (24) hours schedule, are faced with low morale as a consequence of the schedule deficiencies. The union's expert witness testified to the many undesirable consequences, to unit members and the public, of both sleep deprivation, and poor morale.

Supervision and training have suffered under the 10-14 work schedule, and the union showed a number of comparable Cities,

nationally, which deliver BLS and ALS on a twenty-four (24) hour schedule.

These facts, and the other evidence at the hearing, impel the conclusion that the Albany Fire Department 10-14 schedule should be scrapped, in favor of an all twenty-four (24) hour department. In failing to do this as part of this award, I believe this panel is in error.

As to the remainder of the award, there are portions with which I agree, and others with which I do not. Other union demands, not granted herein are, in my mind, justified in the arbitral record. I believe that had the modification in the work schedule, as sought by the union, been implemented as a portion of the award herein, that the award, when considered in its entirety would be balanced and equitable. The absence of the sought after work schedule change impels my dissent.

Dated: Albany, New York
March 18, 1992

Respectfully submitted,



Thomas F. DeSoye,
Employee Organization
Panel Member

DISSENT

This writer is of the opinion that the panel has struck a fine balance in addressing the needs of the Albany Fire Department and its unionized firefighters and commends the chairman for the fine job he has done in articulating the issues and forging a consensus on the issues before the panel. While there are determinations which I, as a management representative, am more enthusiastic about than others, it is a fair and equitable award.

So it is with some reluctance that I must dissent from one provision of the award regarding the establishment of a sick leave bank. In truth, this is a belated dissent from the wisdom of the determination of the Sands panel which dictated the terms of the prior contract. The panel chairman in that instance created out of whole cloth a scheme to address sick leave abuse. Operating on the principle that no good deed goes unpunished, I went along with the chairman in the spirit of unity and on his representation that this clause would somehow stem the extensive use of sick leave. No such pattern has emerged but each member of the unit receives what amounts to a cash award at retirement whether he/she is a sick leave abuser or not.

This was an experiment without precedent which was doomed to failure. While I understand the majority's reluctance to immediately overturn a prior panel's award, I do not want the issue to arise anew in the future without making clear management's displeasure with a

provision which was enacted to address a perceived abuse on the part of some firefighters.

I am sure that the City will enter the next round of negotiations with new proposals in this area and I want to clearly and unequivocally state here that the "bank" clause does not produce the intended result and it should be eliminated and replaced with a clause which will more realistically address this serious problem.



Vincent J. McArdle, Jr.
Public Employer Member

3-18-92