

BACKGROUND

Pursuant to the provisions contained in Section 209.4 of the Civil Service Law, the undersigned Panel was designated by the Chairperson of the New York State Public Employment Relations Board, to make a just and reasonable determination of a dispute between the City of Utica ("City") and the Utica Professional Firefighters Association ("Union").

The City of Utica is a municipal corporation located in Oneida County. Its population is currently estimated as approximately 70,000 people.

The Union is the certified bargaining agent for all full-time civil service uniformed and investigative Firefighter personnel, including Firefighters, Lieutenants, Captains, Chief Instructors, Deputy Chiefs and Assistant Chief, and a Finance Administrator, Fire Mechanics and Fire Signal Maintenance Workers, exclusive of the Fire Chief. There are 180 authorized unit positions, but due to unfilled vacancies (currently 15), there has consistently been less than the full complement.

The last collective bargaining agreement between the parties covered the period commencing April 1, 1989 and ending March 31, 1992.

Prior to the expiration of the 1989-92 Agreement, in February of 1992, the parties began negotiations for a successor

contract, but such negotiations were unsuccessful, and in July of 1993 the parties reached impasse. Subsequent mediation by a PERB Mediator was unsuccessful, and on November 10, 1993, the Union filed a Petition for Interest Arbitration pursuant to Section 209.4 of the Civil Service Law (Joint Exhibit 1).

The City filed a Response to said Petition on December 2, 1993 (Joint Exhibit 2), and thereafter, on January 21, 1994 (Joint Exhibit 3) the undersigned Public Arbitration Panel was designated by the Public Employment Relations Board, pursuant to Section 209.4 of the NYS Civil Service Law.

Hearings were conducted before the undersigned Panel in Utica on July 15 and August 16, 1994. At all hearings, both parties were represented by Counsel and by other representatives. Both parties submitted numerous and extensive exhibits and documentation, and both parties presented argument on their respective positions. After the hearing process was completed, both parties submitted additional exhibits and post-hearing briefs to the Panel.

Thereafter, the undersigned Panel met in several Executive Sessions, and reviewed all data, evidence, argument and issues. After significant discussion and deliberations at the Executive Sessions, the Panel members reached unanimous agreement on this Interest Arbitration Award.

The positions originally taken by both parties are quite adequately specified in the Petition and the Response, numerous hearing exhibits, and post-hearing briefs, which are all incorporated by reference into this Award. Such positions will merely be summarized for the purposes of this Opinion and Award.

The parties extended the jurisdiction of the Panel and requested that a four (4) year Award be issued. Set out herein is the Panel's Award as to what constitutes a just and reasonable determination of the parties' contract for the period April 1, 1992 through March 31, 1996.

In arriving at such determination, the Panel has considered the following factors, as specified in Section 209.4 of the Civil Service Law:

a) comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities;

b) the interests and welfare of the public and the financial ability of the public employer to pay;

c) comparison of peculiarities in regard to other trades or professions, including specifically, 1) hazards of employment; 2) physical qualifications; 3) educational qualifications; 4) mental qualifications; 5) job training and skills;

d) the terms of collective agreements negotiated between the parties in the past providing for compensation and fringe benefits, including, but not limited to, the provisions for salary, insurance and retirement benefits, medical and hospitalization benefits, paid time off and job security.

HEALTH INSURANCEDiscussion on Health Insurance

Much like the situation in the recent Interest Arbitration dispute between the City and the Police Benevolent Association, which was handled by this same Interest Arbitration Panel, the City has had a continuing problem with the ever increasing cost of providing health insurance to unit members. Under the current contractual commitment, the City provides 100% of health insurance coverage for all members of the Firefighters unit, except for those employees hired after April 1, 1990, who are required to contribute 25% of the cost of health insurance. There are currently 20 firefighters paying 25% of health insurance costs (City Exhibit 51).

All parties herein recognize that the continued escalation of employee health insurance costs significantly affects the City's ability to pay for a fair and reasonable increase in salaries. During the instant arbitration hearings, the City indicated that the cost of providing family health insurance and related benefits coverage under the existing plan for firefighters is \$6,917 for 1994-95 (City Exhibit 40). This represents an increase of 10.4% over the cost for the same health coverage in 1993-94 (Union Exhibit 31). Unquestionably, the City is paying more for health insurance coverage than other public employers, due to the higher level of benefits and low co-pays provided through the existing health insurance plan.

As indicated in the Interest Arbitration Award for the Police unit, the City, through negotiations with employee organizations representing all City employees, has sought to have all City employees contribute 10% of the cost of health insurance. This would be in addition to those employees hired after April 1, 1990, who are already contributing 25%, and under the City's proposal, will continue to pay 25%.

The Panel takes notice of the fact that the City has reached agreement with the CSEA unit¹ that if other City employees, including either police or fire are required to contribute 10%, then CSEA unit members will contribute 10%. Additionally, the City is seeking significant changes in the current health insurance coverage, including increased deductibles, increased prescription co-pays and a less expensive dental plan, all of which should serve to lower the costs.

In the recent Police Interest Arbitration Award, this Panel has directed a change in health insurance coverage effective April 1, 1995 for members of the Police unit, and has also directed that all employees contribute 10% of health insurance costs, regardless of date of hire, with such 10% contribution to be effective April 1, 1995 as well.

¹ Consisting of a variety of civilian blue collar and clerical employees of the City.

This Panel has previously expressed its strong concern for the overall financial health of the City--both currently and for the long term. In that regard, the Panel has strongly considered the fact that the City is now seeking to better manage health insurance costs for all City employees, and has made serious efforts to implement a health insurance plan City-wide which will result in lower costs. The Panel has previously considered this issue in the Police Interest Arbitration Award.

As required by the provisions of the Taylor Law, the Panel has reviewed the appropriate fire department comparables², and finds that it is clear that all comparable municipalities continue to struggle to find ways to cope with increasing health insurance costs. Binghamton and Niagara Falls continue to pay 100% of health insurance costs for firefighters (Union Exhibit A, tabs 2 and 5). The Cities of Schenectady and Troy provide for a health insurance contribution which is scaled back during the first five years of employment, ultimately resulting in the payment of 100% of health insurance costs by the employer (Union Exhibit A, tabs 3 and 4). Additionally, the City of Rome currently provides 100% of health insurance costs for all employees except for those hired after December 31, 1985, who contribute 25% (Union Exhibit A, tab 6).

² The parties have agreed that for the purpose of this proceeding the proper comparables for Utica Firefighters are other upstate New York State cities of comparable size and population---specifically Niagara Falls, Schenectady, Troy, Binghamton and Rome.

Most important herein is the fact that in the recent Police Interest Arbitration Award, issued by this same Interest Arbitration Panel on November 15, 1994, the Utica Police will be changing to a new health insurance plan--the New York State Government Health Insurance Program, effective April 1, 1995. As part of that change, all unit members will contribute 10% of the cost of their coverage, whether individual or family. The 25% contribution presently paid by firefighters hired after April 1, 1990 shall be reduced to 10% effective April 1, 1995.

In the recent Police Interest Arbitration Award, the Panel expressed its view that the City's high cost of health insurance was a direct result of the present system of being self-insured in this area. The self-insurance method of paying claims, coupled with the necessary cost of the third party administration of benefits, has evolved to the point at which the City has no choice but to pay what the Panel views as an excessively high cost for health coverage--that of almost \$7,000 per year per employee for family coverage. While the City is correct that assessing all employees members hired before April 1, 1990 a 10% contribution will provide some immediate relief, it does not realistically solve the problem for the future.

The Panel previously noted in the Police Interest Arbitration Award that as health costs under the current City plan continue to rise at an alarming rate, the City will have to seek additional contributions beyond the 10% from members hired

before April 1, 1990, until such time as all City employees end up paying 25% of their health insurance costs. Providing the City with the requested 10% contribution to the current plan merely solves an immediate shortfall, and does not address the real problem. That is, the City's cost of health insurance coverage is simply too high and a change must occur.

There is no question that the City has recognized that the cost of the current health insurance program is too high, and in response to a consultant's study (City Exhibit 35) has requested changes in coverage and increased co-pays as mechanisms to help reduce costs. Nonetheless, even the consultant's study recognizes that such changes and increased co-pays will not reduce costs by any certain amount; as it all depends on the frequency and nature of claims presented to the plan. This is the essential problem with the concept of self-insurance, and it is the view of the Panel, as previously expressed in the Police Interest Arbitration Award, that such changes and co-pays as requested by the City, along with the 10% contribution for all members, are insufficient to resolve the health insurance problem on a long term basis.

Instead, as we held in the Police Interest Arbitration Award, it is the finding of the Panel herein that the only certain way to reduce costs is to change to a more efficient and better managed health insurance program. In the face of continuing health insurance costs, it is necessary to change to a

plan which recognizes that managed care is the key to keeping costs down, and yet still providing a high level of benefits. Accordingly, and in parity with the Utica Police, it is the finding of the Panel that effective April 1, 1995, the City shall provide health insurance coverage for members of the Firefighters unit by joining the New York State Government Employees Health Insurance Program as a participating agency, and shall adopt a resolution to such effect, providing that police shall be covered by the Empire Plan benefits described as Core plus Medical and Psychiatric Enhancements.

The Panel has been advised by representatives of the NYS Government Employees Health Insurance Program that under State law it must accept the Utica Firefighters unit in the NYS Government Employees Health Insurance Program (often referred to as the Empire Plan), and that the approximate cost of requested coverage will be slightly over \$5,000 per year per employee for family coverage.³ That represents a very significant savings for the City from the existing coverage provided through self-insurance for the duration of this Award and the future years.

While there is no doubt some differences in coverage and/or benefits provided, as well as required co-pays, the Panel finds

³ The Panel recognizes that there may be other cost-effective managed health insurance plans available which would fit the needs expressed herein. The Panel has decided upon the NYS Empire Plan because it is required by law to accept the City of Utica as a participating agency at an established cost, and because it has a proven and ongoing track record in the Utica area.

that the Empire Plan as designated herein provides substantially similar coverage to that currently enjoyed by Utica firefighters--at a much reduced cost to the City.

The savings gained from changing to the Empire Plan will both serve to help to fund salary increases provided in this Award and to help the City avoid future unbudgeted and unplanned for increases beyond the norm in the area of health insurance. The Empire Plan is gaining notice for its concept of managed care and for providing a high level of benefit at the lowest cost possible. The Panel believes that such astute management will continue in the future and will save the City future dollars.

However, the Panel further finds that some contribution to health insurance should be required of every City employee, including members of the Firefighters unit, and not just those who were hired after April 1, 1990. As all firefighters share equally in the dangers of their chosen profession, all should share equally in the costs of benefits provided to them. Therefore, effective with the changeover to the Empire Plan on April 1, 1995, all members of the Firefighters unit will contribute 10% of the cost of their coverage, whether individual or family. The 25% contribution now paid by firefighters hired after April 1, 1990 shall be reduced to 10% effective with the changeover to the Empire Plan on April 1, 1995. The City shall adopt and implement a Flexible Benefit Plan pursuant to Section 125 of the Internal Revenue Code. All contributions made by

Utica firefighters for health insurance coverage shall be made and taken by the City in accord with Section 125 of the Internal Revenue Code, providing for a Flexible Benefit Plan. The Panel also notes that Section 125 plans can provide savings to both employers and employees. The Panel directs that the parties meet and discuss extension of the Section 125 plan to permit firefighters to receive favorable tax treatment for all unreimbursed medical expenses and dependent care expenses to the fullest extent permitted by law as long as the City's costs of administering the plan do not exceed the savings to the City. Should the parties fail to agree on this issue, the Panel retains jurisdiction.

It is not the intent of the Panel to disturb the current enrollments of any members of the Firefighters unit in Health Maintenance Organizations ("HMO's"), but only to replace the City's current health insurance program. All such HMO's in which members of the Firefighters unit are currently enrolled shall continue in accord with current practice.

For those members of the firefighters unit enrolled in an HMO, including Firefighters hired after April 1, 1990, there shall be no employee contribution required, unless the net cost of HMO coverage exceeds 90% of the cost of Empire Plan coverage (individual or family coverage as selected). In the event selected HMO coverage exceeds 90% of the net cost of Empire Plan coverage, the employee must contribute that portion of the

increased cost, up to a maximum of 10% cost of the Empire Plan (individual or family coverage as selected). Additionally, should the cost of the selected HMO coverage exceed the cost of the Empire Plan, the employee must pay 10% of the total cost of the HMO selected.

Members of the Firefighters unit who retire on or after the date of this Award shall be bound by the health insurance provisions herein, and shall, effective April 1, 1995, contribute 10% towards the cost of their health insurance coverage, individual or family coverage as selected.

The Panel has found herein that changing to the Empire Plan provides substantial benefits at a significantly lower cost than the City is now incurring. However, in the event the Empire Plan premiums increase, the City shall have the right to change to a different health insurance plan if the Empire Plan at rates equal to or premiums have increased to the extent that another plan providing substantially similar coverage is more cost effective. This shall not affect the contribution rates specified in this Award.

Should the City determine that its current provider will meet the coverages and benefits of the Empire Plan at rates equal to or better than those offered under the Empire Plan, it may do so.

Upon determination by the City that another health insurance plan is more cost effective, it shall give the Union 90 days advance notice of such change, and shall allow the Union to examine the new plan and present any arguments of objection to the City.

The City shall have the unilateral right to change to a different health insurance plan, or use its current provider, so long as the coverage provided is substantially similar to the Empire Plan. The issue of whether or not the new plan is substantially similar shall be arbitrable at the request of the Union, and the Panel Chairman retains jurisdiction of this issue during the term covered by this Award.

The City also seeks to modify the existing dental plan arrangement which currently is provided as a rider on the existing health insurance plan. The Panel concludes that the present practice of providing unlimited and complete reimbursement for dental expenses as long as an employee meets their major medical deductible, is simply not cost effective for the City. The Panel is aware of alternative "stand alone" dental plans which provide substantial benefits at more predictable costs. The Panel directs the City and the Union to negotiate a new dental plan within sixty (60) days. The Panel notes that the current dental plan costs \$103.00 per member per month. The Panel envisions that any new plan shall cost the City no more than \$93.00 per month for the duration of this Award, with the

employees paying any amount over that figure using an IRS Section 125 Flexible Benefit Plan. In order to encourage the parties to mutually agree on the selection and implementation of a plan, effective May 1, 1995 the City's contribution for dental shall be capped at \$93.00 per month with the employees paying any additional cost. If the parties cannot agree within sixty (60) days on an alternative plan, the Panel retains jurisdiction to reexamine this issue.

Accordingly, and after consideration of the extensive exhibits, documentation, and testimony presented herein; and, after due consideration of the criteria specified in Section 209.4 of the Civil Service Law, the Panel makes the following

AWARD ON HEALTH INSURANCE

Except as noted otherwise above with respect to the City's right to change to, or maintain a different plan for substantially similar coverages and benefits, then:

1. Effective April 1, 1995, the City shall adopt the necessary resolution and take all other required action to adopt the New York State Government Health Insurance Program, Core plus Medical and Psychiatric Enhancements, for members of the Firefighters unit.

2. Effective April 1, 1995, all members of the Firefighters unit will contribute 10% of the cost of their coverage, whether individual or family. The 25% contribution now paid by firefighters hired after April 1, 1990 shall be reduced to 10%

effective with the changeover to the Empire Plan on April 1, 1995. The City shall adopt and implement a Flexible Benefit Plan pursuant to Section 125 of the Internal Revenue Code. All contributions made by Utica firefighters for health insurance coverage shall be made and taken by the City in accord with Section 125 of the Internal Revenue Code, providing for a Flexible Benefit Plan.

3. All HMO's in which firefighters are currently enrolled shall continue in accord with current practice. For those firefighters enrolled in an HMO, including firefighters hired after April 1, 1990, there shall be no employee contribution required, unless the net cost of HMO coverage exceeds 90% of the cost of Empire Plan coverage (individual or family coverage as selected). In the event selected HMO coverage exceeds 90% of the net cost of Empire Plan coverage, the employee must contribute that portion of the increased cost, up to a maximum of 10% cost of the Empire Plan (individual or family coverage as selected). Additionally, should the cost of the selected HMO coverage exceed the cost of the Empire Plan, the employee must pay 10% of the total cost of the HMO selected.

4. Members of the Firefighters unit who retire on or after the date of this Award shall be bound by the health insurance provisions herein, and shall, effective April 1, 1995, contribute 10% towards the cost of their health insurance coverage, individual or family coverage as selected.

5. The City shall have the right to change to a different health insurance plan, or continue its existing plan, if the Empire

Plan premiums have increased to the extent that another plan providing substantially similar coverage is more cost effective. Upon determination by the City that another plan is more cost effective, it shall give the Union 90 days advance notice of such change, and shall allow the Union to examine the new plan and present any arguments of objection to the City. The issue of whether or not the new plan is substantially similar is arbitrable at the request of the Union, and the Panel Chairman retains jurisdiction of this issue during the term covered by this Award.

6. The parties are directed to negotiate a new Dental Plan to replace the existing plan for the life of this Award. Any new plan shall cost the City no more than \$93.00 per month per member for the life of this Award. Under such a plan, employees will pay any cost over the \$93.00 per month cost. All contributions made by Utica firefighters for dental coverage shall be made and taken by the City in accord with Section 125 of the Internal Revenue Code, providing for a Flexible Benefit Plan. In order to encourage the parties to reach agreement on the issue, effective May 1, 1995 the City's cost shall be capped at \$93.00 per member per month until such time as a new plan is agreed upon. the member will pay any additional cost. If the parties cannot agree on a new Dental Plan within sixty (60) days, either party may request the Panel to address this issue.

SALARY

Discussion on Salary

Notwithstanding the health care cost concerns raised by the City, the paramount issue as articulated by the Union is in gaining a significant increase in salary so that the Utica firefighters are no longer the lowest paid firefighters when compared to similar cities. The Union is seeking a 10% salary increase effective April 1, 1992, and a 10% salary increase effective April 1, 1993. The Union maintains that such proposed significant increases are required and justified based on comparable salaries received by firefighters in similar cities. The Union argues that the Utica Firefighters are dead last when viewed against the agreed upon comparable cities--Niagara Falls, Schenectady, Troy, Binghamton and Rome. The Union also indicates that the higher ranking officers in the Firefighters unit similarly rank last in salary when compared to other superior officers in the comparable cities.

The Union argues that it will take a minimum of 11% across the board just to bring Utica Firefighters to the average salary of comparable cities in 1992. Additionally, the Union indicates that current salaries of Utica Police are significantly higher than Utica Firefighters, as a result of previous Interest Arbitration Awards affecting the Utica Police unit. As of March 31, 1992, when the Firefighter contract expired, a top grade Utica Police Officer had a base salary of \$29,857 as compared to a Firefighter's base salary of \$29,390 (see Union Exhibit A, tabs 1 and 7). The Utica Police then

22, 28 and 29). Further, the City has encountered a problem in collecting taxes, with uncollected taxes increasing to 7.1% in 1991-92.

In reaching the salary determinations herein, the Panel has fully considered the current state of the Utica area's economy, and the attendant loss of jobs from the realignment of nearby Griffis Air Force Base--over 6,800 job directly and over 10,000 area jobs in total (City Exhibits 12 and 14). The U.S. Air Force has estimated that the Base realignment will result in the loss of \$750,000,000 from the area's economy. The Panel also takes judicial notice of the additional cutbacks and elimination at the Rome Labs sector of the Griffis Air Force Base. This has a direct impact upon the City's ability to pay the salary raises sought by the Utica Firefighters.

The Panel has also reviewed the City's budget for 1993-94 and 1994-95 (City Exhibit 44), as well as the budget history for the past 10 years (City Exhibit 26). The Panel has also reviewed Utica's current bond rating (City Exhibits 13 and 31) and the City's overall financial status (City Exhibits 1, 2A, 2B, 23, 24, 25A, 25B and 32). The Panel notes that the City has implemented a tax cut in the property tax rate for 94-95 and that the previous budget deficit has been addressed by the issuance of Special Revenue Bonds pursuant to State legislation (Chapter 711, Laws of 92; Union Exhibit 4). Finally, the Panel takes notice of the recent raises provided to the Utica Police by the recent Interest Arbitration Award.

received an increase of 4% on April 1, 1992 and an additional 2% on January 1, 1993. That created a difference of \$1,815 per year between the Utica Police and Firefighters top base salary. The Union seeks parity for the Firefighters.

The City argues that its taxpayers have carried a heavy burden over the past decade, and that the economic condition of the City simply does not allow for the high salary increases sought by the Firefighters. The City points out that the rate of inflation has steadily declined, and reached a 7 year low of 2.7% in 1993. The most recent figure (September 1994) puts the rate of increase at 0.27% for the month and 2.96% during the previous 12 months. The City points out that the raises sought by the Firefighters are substantially above the rate of inflation and are not within the ability of the City to pay due to the current economic condition of the City.

The City reminds the Panel that Utica must be considered a relatively poor city, consisting of large numbers of retired residents living on fixed incomes, and that it has a declining property tax base. During the past decade, city taxes have increased nearly every year (City Exhibit 4). In 1993-94 City taxes were increased by 22%. Due to increases in City school taxes, the real property tax burden has continued to rise sharply each year. In addition to increased real property taxes, the City has implemented a system of user fees for garbage removal, which impacts upon the same property owners as the increase in real property taxes (City Exhibits

The City has budgeted 4% raises for 1992 and 1993 for the firefighters. These raises were based upon the premise that health insurance cost containment measures would be implemented during that time period. Since that time period has passed, the City points out that it has not enjoyed any savings in health insurance costs, and accordingly, raises of less than 4% would be appropriate.

The Panel has considered all of the data and arguments presented by both parties, and has applied such data to the criteria mandated by statute as specified in Section 209.4 of the Civil Service Law.

It is clear that, at present, the proper comparables for Utica Firefighters are the New York State cities discussed by both parties, and previously used as proper comparables in the recent Utica Police Interest Arbitration Award. Those cities are Niagara Falls, with a population of approximately 62,000 people; Schenectady, with a population of approximately 65,000 people; Troy, with a population of over 54,000 people; Binghamton, with a population of approximately 53,000 people; and Rome, which although smaller than Utica in both population and the size of the Fire Department, has many similarities with Utica. The Panel also has compared Utica Firefighters benefits and wages with those of Utica Police, where appropriate.

As the Panel stated in the recent Police Interest Arbitration Award, there are many factors that must be considered under the Taylor Law to reach a just and reasonable determination of the proper

compensation to be awarded to the Utica Firefighters herein. The issue of Utica's ability to pay is an important factor that must be given paramount attention, but it must be viewed against the obvious importance of maintaining an acceptable level of fire services which are necessary to protect life and property in Utica. The huge and dangerous fire which occurred on March 14, 1994 at the Kanatenah Apartments in Utica made it clear just how dangerous the job of a firefighter is, and how important it is to the citizens of Utica to have a competent, professional and well motivated Fire Department (see Union Exhibit 6). Arson continues to be a problem in the City, and has resulted in an expanding daily workload for Utica Firefighters (Union Exhibit 1). Additionally, Utica Firefighters have been directed to perform additional duties in the areas of Emergency Medical Response (Union Exhibits 7A, 7B and 7C), Hazardous Materials Response (Union Exhibits 1 and 7), and daily house inspection duties throughout the City (Union Exhibits 7D and 7E).

It is the finding of this Panel that the ability of the City to provide for salary increases must be reasonably balanced with the public safety and welfare, and the obligation to provide Utica Firefighters with a fair and equitable wage for the important and in many cases, dangerous work which they perform.

As of 3/31/92, the date of contract expiration, the top base salary, after 5 years of service, for a Utica Firefighter was \$29,390. A review of salaries of firefighters with similar service experience, in the comparable cities as of 3/31/92 is revealing:

Niagara Falls	\$30,753
Schenectady	\$34,666
Troy	\$32,554
Binghamton	\$34,114
Rome	\$30,963

The City has made provisions in its budget for a 4% salary increase for the Firefighters for 1992-93 and an additional 4% salary increase in 1993-94. The salary increases awarded herein utilize the money previously budgeted, and fund the increases for 1994-95 and 1995-96 with the savings garnered from the change in health insurance and the 10% health insurance contribution to be made by all members of the Firefighters unit. It is the considered opinion of the Panel that such increases as provided herein are within the ability of the City to pay and will not require any additional tax levy or bond issuance to be met.

The Panel has also considered the fact that the complement of Utica Firefighters remains unfilled and that there are currently 15 vacancies, which has been estimated as saving approximately \$300,000 per year (Union Exhibit 1). While some increased overtime for the remaining officers has resulted from this reduction in complement, this has been at straight time, rather than traditional overtime rates, and the overall effect has been of a significant monetary saving to the City.

Therefore, after careful consideration and review of all the data and material presented herein, the Panel has concluded that salary increases to Utica Firefighters are warranted, and that the City does have the ability to pay such modest increases. Such

increases are necessary, and will help to bring Utica Firefighters up to par when viewed against comparable Fire departments in upstate New York.

However, it is apparent that the entry level salary for Utica firefighters continues to be acceptable, based on number of applicants seeking employment as Utica firefighters, and when compared with the starting salaries of other comparable fire departments. The Panel has therefore, excluded entry level salaries from any of the salary increases awarded herein, and has frozen the entry level salary for a Utica firefighter at \$24,492 until March 31, 1996. Any increase in the entry level salary for a Utica firefighter after that date shall be the subject of future negotiations between the parties.

The Panel also finds that second year salaries for Utica firefighters, while below the norm when compared with other comparable fire departments, are not as far below as those Utica firefighters beyond the second year level. Therefore, salaries for second year firefighters have been increased by the percentage increases provided herein, but have been excluded from receiving the two lump sum payments provided herein.

The Panel notes that the Firefighters have worked without a new agreement since 4/1/92. That is one year longer than the period the police worked without an agreement. The Panel recognizes that some accommodation should be made for those Firefighters who have since

retired, many of whom retired in anticipation of an earlier contract settlement which would have been retroactive. To accommodate this, the Panel will make the first year increase on base salary only retroactive for the few number of retirees.

The Panel also notes that the existing salary for Mechanic Supervisor when compared to other Firefighter salaries in the unit is too high. The City presently employs one Assistant Mechanic. That existing employee will enjoy a significant salary increase, albeit one more in line with the salary structure which the Panel ultimately envisions. However, Mechanics hired after the date of this Award will be paid the same salary as a Firefighter. A Mechanic Supervisor hired, if any, to fill the vacant position after the date of this Award will be paid the same salary as a Firefighter Lieutenant. The Panel directs the parties to adjust those categorizations when those positions are filled.

Accordingly, and after consideration of the extensive exhibits, documentation, and testimony presented herein; and, after due consideration of the criteria specified in Section 209.4 of the Civil Service Law, the Panel makes the following

AWARD ON SALARY

1. All Firefighters unit members who were on the fire payroll on 4/1/92 and were at the second year base salary or above, and remain on the payroll on the date of this Award, shall receive a 4% increase in salary effective 4/1/92, excluding those at the entry

level salary. All Firefighters who were on the payroll on 4/1/92 and who subsequently retired will receive the 4% retroactive award limited solely to their base salary from 4/1/92 until the date of their retirement. Such retirees shall receive no other retroactive payments.

2. All Firefighters unit members who were on the fire payroll on 4/1/93 and were at the third year base salary or above, and remain on the payroll on the date of this Award, shall receive a lump sum payment of \$1,500 in lieu of any percentage increase to salary or any other payment. This payment of \$1,500 shall be placed on the salary schedule effective 4/1/95, with the exception of the entry level salary and the second year salary.

3. All Firefighters unit members who were on the fire payroll on 4/1/94 and were at the third year base salary or above, and remain on the payroll on the date of this Award, shall receive a lump sum payment of \$1,500 in lieu of any percentage increase to salary or any other payment. This payment of \$1,500 shall be placed on the salary schedule effective 4/1/95, with the exception of the entry level salary and the second year salary.

4. The above two payments of \$1,500 each to eligible unit members are lump-sum payments in lieu of any percentage increases on base salary or otherwise, and shall constitute the sole and full retroactive payment for the period commencing 4/1/93 and ending

3/31/95. There will be no recalculation of overtime payments and other payments called for by the contract using these two payments of \$1,500. The 4% increase effective 4/1/92 is fully retroactive for the entire period up to the date of the Award.

5. Effective 4/1/95 the salary schedule shall be increased by 3%, with the exception of the entry level salary which remains frozen at \$24,492.

6. Effective 1/1/96 the salary schedule shall be increased by 3.5%, with the exception of the entry level salary which remains frozen at \$24,492.

7. The salary schedule for the 1992-96 Agreement is attached hereto as Appendix A.

8. The longevity article of the existing Agreement is deleted as no longer necessary in light of the new salary schedule.

EMERGENCY MEDICAL TECHNICIANS

Discussion on Emergency Medical Technicians

Currently, any member of the Firefighters unit who is a New York State Certified Emergency Medical Technician ("EMT") receives a yearly stipend of \$175.00, and any member of the unit who is an EMT III receives a yearly stipend of \$350.00. In addition, those Firefighters assigned to Rescue 1 previously known as Car 206, currently receive a stipend of \$10.00. Rescue 1 is the busiest apparatus in the Department with its two Firefighters responding to most Emergency Medical Service calls in the City.

In the 1993 consultant's study commissioned by the City (Union Exhibit 1), it was recognized that the EMT component of the Fire Department was becoming more active, due to a dramatic increase in calls requiring EMT services. Each Fire Station now has emergency medical service capability, and the Utica Fire Department is the first responder to most locales within the City. As a direct result of the 1993 consultant's study, certified EMTs were transferred to various Fire Stations in order to provide necessary coverage at each station as recommended by the consultant's study (see Union Exhibits 7A, 7B and 7C). Unquestionably, those members of the Firefighters unit who perform as EMTs have added duties and responsibilities, and are required to maintain State certification. Such recertification must occur every 3 years, and requires classroom instruction and training.

The Panel notes that all of the comparable fire departments provide greater compensation for EMT certification than that provided by the Utica Fire Department (Union Exhibit A, tab 1). Most provide either time off for training or at the least, training provided by or paid for by the employer. In view of the higher compensation provided to EMTs by comparable fire departments, and the increased workload to which Utica EMTs are currently subject to, it is the finding of the Panel herein that there should be an increase in the stipend for EMTs.

The Panel also finds that when undergoing instruction for recertification while on duty, EMTs should be granted time off with pay to attend such instruction. If instruction for recertification is attended while off duty, each unit member shall do so on his/her own time, but the City shall compensate the employee for the cost of the recertification. The City is encouraged by the Panel to arrange for recertification to occur while on duty, and at a convenient location for unit members.

AWARD ON EMERGENCY MEDICAL TECHNICIANS

1. Article V, Section 1B, paragraph 1 of the 1989-92 Agreement shall be amended to increase the stipend for Rescue 1 to \$20.00 per day. In the event that more than two Firefighters are assigned to Rescue 1, the stipend shall remain at \$10.00 for assignees over the two presently assigned on a normal basis.

2. Article V, Section 1B, paragraph 2 of the 1989-92 Agreement shall be amended to increase the stipend for any Certified Emergency Medical Technician I or II to \$300.00 per year.

3. Article V, Section 1B, paragraph 3 of the 1989-92 Agreement shall be amended to increase the stipend for any Certified Emergency Medical Technician III or IV to \$600.00 per year.

4. The City agrees to pay the cost of any mandated schooling, training, instruction or course incurred in renewing the certification for any level EMT. Members who attend such recertification instruction while on duty shall be released from work.

5. All increases in EMT stipends in this section are effective 4/1/95.

OUT OF TITLE & CALL-BACK ASSIGNMENTS

Discussion on Out-of-Title and Call-Back Assignments

Article IV, Section 5 and Article VI, Section 22 of the 1989-92 Agreement provides for "absolute preference" to any member of the unit planning to retire for a 24 month period for both "out-of-title" assignments and for "call-back" assignments.

This preference allowed for a prospective retiree to get preference for both out-of-title pay and call-back pay and thereby boost his final average salary, resulting in an increase in his pension benefit upon retirement. However, in a recent decision (Feb. 1994) of the NYS Police and Fire Retirement System, Matter of Bascom (Union Exhibits 10B and 10C), the Retirement System refused to count such payments toward final average salary for purposes of calculating the retirement pension benefit. As a result of this recent ruling by the Retirement System, and the interpretation followed in its determinations thereafter, members of the unit have lost the benefit of their previous bargain concerning absolute preference.

Therefore, the Panel has determined that the language contained in the 1989-92 Agreement must be modified so as to replace the language concerning absolute preference with a system for distributing out-of-title work and call-back assignments based on seniority. Such modification will serve to fairly distribute such assignments based on seniority and will not be contrary to the rulings of the Retirement System.

AWARD ON OUT OF TITLE

1. Article IV, Section 5B of the 1989-92 Agreement shall be amended to read as follows:

- B. "Out of Title" work shall be offered to any member of the Utica Professional Firefighters Association who is on a promotional list and/or with nineteen years or more of service in order of seniority.

AWARD ON CALL BACKS

1. Article VI, Section 22 of the 1989-92 Agreement shall be amended to read as follows:

A. For the purpose of this Section, a call back is defined as an instance where because of scheduled staffing needs, a firefighter or officer is offered the opportunity to work in order to fill a vacancy or cover for an absent employee.

B. Call back opportunities will be offered using a rotation among all personnel who have signed up in advance to be canvassed for call back. The canvass will use four separate rotating wheels. The first wheel will be limited to firefighters and officers with 15 years of service or more. The second wheel will be limited to firefighters and officers with more than 9 and less than 15 years of service. The third wheel will consist of firefighters and officers with more than 5 and less than 10 years of service. The fourth wheel will consist of all firefighters and officer with 5 years of service or less.

C. Call back will be distributed among all people in the wheel on an equitable basis as follows. Call back opportunities will be equalized over a 28-day cycle. An officer or firefighter will not be eligible for call back if the call back would result in the officer or firefighter working more than 216 hours in the 28-day cycle. If call back is offered, it will first be offered to the person in the first wheel who has the least amount of call back within the current 28-day cycle. If that person declines, or is unavailable when called, it will be offered to the person on the first wheel with the next lowest total in the 28-day cycle. The process will be repeated for each call back opportunity until either every person on the first wheel declines or is no longer eligible. At that point the second wheel is canvassed using the same procedure, followed by the third and fourth wheels. A member who declines will not be recanvassed until the next cycle for the member's wheel.

D. When an officer or firefighter does not wish to work call back he/she may remove his/her name from the wheel. If he/she wishes to participate at a later time, he/she can sign back on at the beginning of the next 28-day cycle. No record of refusals will be kept. However, any member who falls three opportunities behind will not be allowed to make up the lost chances.

SICK LEAVE INCENTIVE

Discussion on Sick Leave Incentive

Article III of the 1989-92 Agreement provides that each member of the Firefighters unit shall accrue sick leave on the basis of 1-1/4 days per month to a maximum accumulation of 300 days. However, there is no provision for payment for unused days, nor is there any current incentive for members of the unit to strive to avoid the use of sick days unless absolutely necessary.

The Panel is of the view that a sick leave incentive program will reduce the current use of sick leave by unit members and will increase productivity within the Fire Department. The implementation of the sick leave incentive program, effective 4/1/95, will reward those unit members who have maintained their overall health and have thereby increased their productivity as Utica firefighters.

The Panel is mindful of the unique nature of this benefit and that it may not result in mutual advantage to the parties. Therefore, the Panel imposes a "sunset" provision in this benefit giving the option to the parties to negotiate its continuance upon mutually agreeable terms in their next contract.

AWARD ON SICK LEAVE INCENTIVE

1. There shall be a new section added to Article V of the 1989-92 Agreement which provides for the establishment of a sick leave incentive program for all unit members.

2. The Sick Leave Incentive shall be as follows:

For each unit member who has zero absences due to sickness or physical inability to work under Section 207 of the General Municipal Law, for the year period running from April 1 to March 31 of each year, he shall receive a year end bonus of \$300.00.

For each unit member who has one (1) absence due to sickness or physical inability to work under Section 207 of the General Municipal Law, for the year period running from April 1 to March 31 of each year, he shall receive a year end bonus of \$150.00.

Notwithstanding the provisions of Section 209(a)(1)(e) of the Civil Service Law, the Sick Leave Incentive program contained in this section shall terminate upon the expiration of this contract.

REMAINING ISSUES

Discussion on Remaining Issues

The Panel has reviewed in great detail all of the demands and proposals of both parties, as well as the extensive and voluminous record in support of said proposals. The fact that these proposals have not been specifically addressed in this Opinion and Award does not mean that they were not closely studied and considered in the overall context of contract terms and benefits by the Panel members. In interest arbitration, as in collective bargaining, not all proposals are accepted, and not all contentions are agreed with. The Panel, in reaching what it has determined to be a fair result, has not addressed or made an Award on many of the proposals submitted by each of the parties. The Panel is of the view that this approach is consistent with the practice of collective bargaining. Thus, we make the following award on these issues:

AWARD ON REMAINING ISSUES

Any proposals and/or items other than those specifically modified by this Award are hereby rejected.

RETENTION OF JURISDICTION

The Panel Chairman hereby retains jurisdiction of any and all disputes arising out of the interpretation of this Opinion and Award.

REVISION OF CONTRACT

The Panel directs the parties herein to revise the 1989-92 Agreement in accordance with the provisions of this Award, and, to prepare and execute a 1992-96 Agreement which reflects the provisions of this Award, to be completed no later than 7/1/95.

DURATION OF CONTRACT

The Panel has been authorized by the parties to exceed the two year maximum contract duration as provided by the Taylor Law in Section 209.4(c)(vi).

This Award therefore provides for an Agreement for the period commencing April 1, 1992 and ending March 31, 1996.



JEFFREY M. SELCHICK, ESQ.
Public Panel Member and Chairman

3/16/95
Date

Concur



RONALD G. DUNN, ESQ.
Employee Organization Panel Member

3/16/95
Date

Concur



BENJAMIN J. FERRARA, ESQ.
Employer Panel Member

3/16/95
Date

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

On this *16th* day of *March*, 1995, before me personally came and appeared Jeffrey M. Selchick, Esq., to me known and known to me to be the individual described in the foregoing Instrument, and he acknowledged to me that he executed the same.

Cathy L. Selchick
Notary Public
CATHY L. SELCHICK
NOTARY PUBLIC STATE OF NEW YORK
NO. 4830518
QUALIFIED IN ALBANY COUNTY *1995*
COMMISSION EXPIRES NOVEMBER 30

STATE OF NEW YORK)
COUNTY OF *Albany*) ss.:

On this *16th* day of *March*, 1995, before me personally came and appeared Ronald G. Dunn, Esq., to me known and known to me to be the individual described in the foregoing Instrument, and he acknowledged to me that he executed the same.

Rosalyn Schwartzberg
Notary Public
ROSALYN SCHWARTZBERG
Notary Public, State of New York
No. 9
Qualified in Albany County
Commission Expires *11/30/96*

STATE OF NEW YORK)
COUNTY OF *Oranoga*) ss.:

On this *16th* day of *March*, 1995, before me personally came and appeared Benjamin J. Ferrara, Esq., to me known and known to me to be the individual described in the foregoing Instrument, and he acknowledged to me that he executed the same.

Cheryl M. Kane
Notary Public
CHERYL M. KANE
Notary Public in the State of New York
Appointed in Oranoga County
My Commission Expires *2/4/97*

	CURRENT (3/31/92)	4/1/92	4/1/95	12/31/95
FIREFIGHTER				
Entry Level	24,492	24,492	24,492	24,492
Second Year	26,534	27,595	28,423	29,418
Step 1 (3-5 years)	29,596	30,780	34,815	36,033
Step 2 (6-8 years)	29,986	31,177	35,264	36,498
Step 3 (9-11 years)	30,272	31,483	35,610	36,856
Step 4 (12-15 years)	30,566	31,789	35,955	37,214
Step 5 (16-19 years)	30,860	32,094	36,301	37,572
Step 6 (20 years-Ret.)	31,153	32,399	36,647	37,930
LIEUTENANT				
Step 1 (3-5 years)	32,556	33,859	38,296	39,636
Step 2 (6-8 years)	32,976	34,295	38,790	40,148
Step 3 (9-11 years)	33,297	34,629	39,171	40,542
Step 4 (12-15 years)	33,623	34,968	39,551	40,935
Step 5 (16-19 years)	33,946	35,304	39,931	41,329
Step 6 (20 years-Ret.)	34,268	35,639	40,312	41,723
CAPTAIN, LINEMAN, FINANCE ADMINISTRATOR				
Step 1 (3-5 years)	35,812	37,244	42,126	43,600
Step 2 (6-8 years)	36,274	37,725	42,669	44,163
Step 3 (9-11 years)	36,629	38,094	43,088	44,596
Step 4 (12-15 years)	36,985	38,464	43,506	45,029
Step 5 (16-19 years)	37,341	38,835	43,924	45,462
Step 6 (20 years-Ret.)	37,695	39,203	44,343	45,895
DEPUTY CHIEF				
Step 1 (3-5 years)	39,393	40,969	46,338	47,960
Step 2 (6-8 years)	39,401	40,977	46,936	48,579
Step 3 (9-11 years)	40,292	41,904	47,397	49,055
Step 4 (12-15 years)	40,684	42,311	47,857	49,532
Step 5 (16-19 years)	41,075	42,718	48,317	50,008
Step 6 (20 years-Ret.)	41,465	43,124	48,777	50,484

	CURRENT (3/31/92)	4/1/92	4/1/95	12/31/95
DEPUTY CHIEF/INSTRUCTOR, INSPECTOR, SIGNAL MAINT.				
Step 1 (3-5 years)	43,332	45,065	50,972	52,756
Step 2 (6-8 years)	43,491	45,231	51,630	53,437
Step 3 (9-11 years)	44,321	46,094	52,136	53,961
Step 4 (12-15 years)	44,752	46,542	52,642	54,485
Step 5 (16-19 years)	45,183	46,990	53,149	55,009
Step 6 (20 years - Ret.)	45,612	47,436	53,655	55,533
ASSISTANT CHIEF				
Step 1 (3-5 years)	47,665	49,572	56,069	58,032
Step 2 (6-8 years)	48,280	50,211	56,793	58,781
Step 3 (9-11 years)	48,753	50,703	57,350	59,357
Step 4 (12-15 years)	49,227	51,196	57,907	59,933
Step 5 (16-19 years)	49,701	51,689	58,463	60,510
Step 6 (20 years-Ret.)	50,173	52,180	59,020	61,086
ASSISTANT MAINTENANCE				
Step 1 (3-5 years)	36,052	37,493	39,750	41,500
Step 2 (6-8 years)	36,474	37,977	40,000	41,600
Step 3 (9-11 years)	36,829	38,349	40,250	41,700
Step 4 (12-15 years)	37,185	38,721	40,500	41,800
Step 5 (16-19 years)	37,541	39,093	40,750	41,900
Step 6 (20 years-Ret.)	37,895	39,466	41,000	42,000