

**STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD  
INTEREST ARBITRATION PANEL**

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**In the Matter of the Arbitration between**

**THE CITY OF AMSTERDAM,**  
Public Employer,

**OPINION AND AWARD**

-and-

**THE AMSTERDAM PROFESSIONAL  
FIREFIGHTERS UNION, I.A.F.F., LOCAL 2835,**  
Employee Organization.

**PERB Case No.:IA98-036; M-98-253**

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**BEFORE: Thomas N. Rinaldo, Esq.  
Public Panel Member and Chairman**

**Timothy Murphy  
Employee Organization Panel Member**

**Elayne G. Gold, Esq.  
Roemer, Wallens & Mineaux, LLP  
Employer Panel Member**

**APPEARANCES:**

**For the City of Amsterdam:**

**Roemer, Wallens & Mineaux, LLP  
Jeffrey S. Hartnett, Esq., of Counsel**

**For the Amsterdam Professional Firefighters Union  
I.A.F.F., Local 2835**

**Thomas J. Jordan, Esq.**

**NYS PUBLIC EMPLOYMENT RELATIONS BOARD  
RECEIVED**

**JAN 26 2000**

**CONCILIATION**

**BACKGROUND FACTS**

Pursuant to the provisions contained in Section 209.4 of the Civil Service Law, the undersigned Panel was designed 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 Amsterdam ("City") and the Amsterdam Professional Firefighters Union, I.A.F.F., Local 2835 ("Union").

The City of Amsterdam is a municipal corporation located in Montgomery County and encompasses approximately six square miles. Its population is currently estimated as approximately 19,176 people. The City is located some twenty-five miles from the City of Albany and is considered part of the Greater Capital District Area due to the significant commuter traffic between Amsterdam and Albany.

Evidence in the record would indicate that the City has experienced a steady population decline since 1980. In 1980, the population was 21,872; in 1990, the population had decreased to 20,714, and the estimated population, as noted, as of July 1, 1996, was 19,176. As of 1990, twenty-six percent of the City's population was sixty-two years of age or older. Approximately thirteen percent of the City's population in 1990 was living below the poverty level. The City's work force has seven different employee organizations: the Union herein, the Amsterdam Police Benevolent Association, the Amsterdam Superior Officers Association, the City Hall Unit (CSEA), the Waste Water Facility Unit (CSEA), AFSCME, and the ATU.

The Union is the certified bargaining agent for all full-time Firefighters in the City's Fire Department excluding the Fire Chief. The Fire Department consists of thirty-seven full-time

personnel including the Fire Chief. There are four Battalion Chiefs, six Lieutenants, twenty-two Firefighters-Drivers and four Firefighters. It would appear from the record that the Fire Department provides the typical array of fire and rescue services to the City, to include fire suppression, emergency medical service, confined space and water rescues, and dispatching. As an adjunct to these services, the Fire Department must engage in regular maintenance of equipment, housekeeping, and training necessary for the performance of these services.

In fiscal year 1997-98, a Firefighter's base salary ranged from \$21,495 to \$32,938 at "5 Years." The four Battalion Chiefs, in fiscal year 1997-98, had a base salary at "5 Years" of \$38,037.62. The six Lieutenants, in fiscal year 1997-98, had a base salary at "5 Years" of \$34,988.29. The average annual salary for the unit in 1997-1998 was \$32,098.70.

The members of the City's Fire Department work a twenty-four hours on and seventy-two hours off work schedule. The Department is divided into four battalions. Each battalion is staffed with nine men.

The last Collective Bargaining Agreement between the Parties covered the period which commenced July 1, 1996 and ended June 30, 1998.\*

Prior to the expiration of the 1996-98 Agreement, in May of 1998, the Parties began negotiations for a successor Contract, but such negotiations were unsuccessful and the Parties reached impasse. Subsequent mediation by a PERB Mediator was unsuccessful, and on or about February 26, 1999, the Union filed a petition for compulsory interest arbitration pursuant to

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\*Union Proposal No. 1 initially sought a three year Agreement. After the hearing, the Union modified this proposal to a two year Award, the maximum award period the Panel has statutory authority to issue an award for without the written consent of both Parties. The City has concurred with the Union's modified proposal.

Section 209.4 of the Civil Service Law.

The City filed a response to said petition on or about March 12, 1999, and thereafter, the undersigned Public Arbitration Panel was designated by the Public Employment Relations Board, pursuant to Section 209.4 of the New York State Civil Service Law.

A hearing was conducted before the undersigned Panel on July 16, 1999, at the New York State Public Relations Board in Albany, New York. Each Party was represented in making its presentation to the Panel, and, in doing so, each Party submitted numerous and extensive exhibits and documentation, as well as the presentation of argument on their respective positions. After the hearing process was completed, both Parties submitted post-hearing briefs to the Panel.

Thereafter, the undersigned Panel met in 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 adequately specified in the petition and the response, numerous exhibits, and in the 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. Set out herein is the Panel's Award as to what constitutes a just and reasonable determination of the Parties' Contract for the period July 1, 1998, through June 30, 2000.

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

- (a) 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 interest and welfare of the public and the financial ability of the public employer to pay;

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

(d) 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.

### **PROPOSALS**

At the hearing, the Union withdrew its proposals 3, 5, 8, 9, 10 (only the third paragraph), 12, 13, 14, 15, 16, 18, and 19. Moreover, Union proposal No. 11 was settled. Thus, the following Union proposals remain open: 1, 2, 4, 6, 7, 10 (except paragraph three), and 17 (which was modified to \$5,000). Also noted, Union Proposal 1, concerning the award period, as modified has been accepted by the City.

City proposals Nos. 2, 6 (as modified), and 8 (as modified) were agreed to in the course of negotiations. Hence the following City proposals remain open: 1, 3, 4, 5, and 7.

### **SALARY (Union Proposal No. 2)**

The Union has sought a 5% salary increase in the first year and a 3.5% salary increase in the second year of the Contract. The City contends that the wage increase for the Union

should be reasonable as measured by what other City bargaining units have received and in light of the City's current fiscal condition.

According to the Union, its work load has increased significantly during the past seven years as measured by total calls responded to and in comparison to other Fire Departments. In addition, the Union maintains that a comparison with other Fire Departments reveals that the Union is undercompensated. Thus the Union posits that it is five to six percent behind Firefighters' salaries in other Departments and thus needs an additional 3.5% in the second year of the Award period to keep pace. In the Union's estimation, the City has the ability to pay the requested increases in salary. A comparison between Union and other City employees, according to the Union, demonstrates that the City has the ability to pay the Firefighters what comparables are making although it has not done so and although the City has given substantial salary increases and other benefit increases to other City employees that have exceeded the Firefighter salary and benefits over time.

The Union also points to the hazards of employment faced by a Firefighter, and observes that this is a factor that the Panel is statutorily required to consider. The Union points to evidence showing that in the year 1997 in the State of New York there were eighteen Firefighter deaths and 8,223 job-related injuries. The hazards of the Union's membership have increased, the Union argues, due to its increased role in responding to medical emergencies. In focusing on the comparison between the Union membership and other City employees, the Union claims that the record establishes that the City has sought to use its agreements with the Police as a measure of determining appropriate salary and benefit increases for Firefighters. The Union claims, however, that the evidence in the record establishes that the Union has fallen behind the

rates and benefits granted to other City employees, including the Police. The Union identifies what it considers to be significant inequalities between Union members and the Police in the City. It notes that in 1998 and 1999, the Police unit received a 3% increase and another 3% increase for 1999-2000. The Union claims that the increase to be awarded by this Panel should be no less than these increases given the Police, and in fact should be greater for the reasons advanced by the Union. Thus, the Union notes that the Police received a \$5,000 retirement bonus that Union members were not given and that the Police receive greater benefits as far as personal leave, clothing allowance, and health insurance buy-out than do Union members. Its evidence, according to the Union, establishes that for the period 1991 through 1999, Firefighters have been 2% behind the Police in terms of percentage salary increases. According to the Union, this Panel, to insure that the Union members will not lose more ground to the Police, would have to award the Firefighters a 3.7% increase in 1998 and a 3.7% increase in 1999. The Union identifies with what it considers to be additional inequality because Firefighters contribute more per-person for health insurance than other City units, the Police included, and the Union is the only Union with an "automatic escalator" clause for health insurance contributions.

When focusing on comparables, the Union identifies the following cities: Cohoes, Glen Falls, Gloversville, Johnstown, Saratoga Springs and Watervliet as cities with similar populations that are considered part of the Greater Capital District Area. The Union argues that its salaries should be brought up to at least the average of the comparable cities. Relying on the evidence of its witness, Economist Kevin Decker, the Union maintains that its average salaries are behind the average salaries for Firefighters in the comparable communities at every step. According to the Union, to catch up to the average of the salaries for the top grade Firefighters

of the comparable fire departments, the Panel would have to award a total salary increase for 1998 and 1999 of 5.15% plus 3.2%, for a total of 8.35%. In the Union's estimation, its request for a 5% salary increase in 1998 and a 3.5% increase in 1999 must be considered extremely reasonable. A comparison with the comparables, the Union further claims, shows that its career earnings lag behind Firefighters in the comparable cities.

According to the Union, the City has the clear ability to pay the salary increases sought by the Union. In this regard, the Union notes that the City's ability should also be applied to the other Union demands. The Union relies on the testimony of Mr. Decker and Union Exhibit "20" to advance its argument on ability. The criteria Mr. Decker focused on, the Union submits, were reasonable measures of the City's ability to pay. In commenting on Mr. Decker's testimony, the Union notes that the City has elected to cut the property tax rate for 2000, which decrease Mr. Decker would not expect to see accomplished in a City with financial trouble. According to the Union, Mr. Decker's analysis also reveals that the City's tax rate has actually decreased and that the City is using less of its constitutional tax limit than most of the comparable communities. Mr. Decker also pointed out, the Union notes, that the City has been benefitting from the Montgomery County sales tax and has the lowest debt burden of the comparable communities. Mr. Decker, the Union also adds, found that the City's "budgeted" surplus/deficit, when compared to its "actual" surplus/deficit, revealed that the City consistently underestimated its revenues and overstated its expenditures. The Union states that Mr. Decker further observed that the contingency appropriation in the 1999-2000 budget contained sufficient funds to allow the City to grant the Union membership reasonable salary and benefit increases. The City's utilization of its constitutional debt limit is also at a low end, according to the Union, and stands

as further evidence of the City's ability to pay.

The City urges the Panel to consider the wage increases the City negotiated with other bargaining units. According to the City, it can appropriately engage in pattern bargaining. Focusing on the six bargaining units in the City, independent of the Union herein, the City notes that in fiscal year 1998-1999, five of these units took a 3% wage increase and the sixth unit, the Superior Officers Association, has not yet entered into a successor agreement that would cover fiscal year 1998-1999. As for fiscal year 1999-2000, the City observes that only two other units have negotiated wage increases: the City's Police agreeing to a 3% wage increase and the City's ATU agreeing to a 2% wage increase. These negotiated wage increases, in the City's estimation, should be determinative of the Panel's decision. In addition, the City argues that, contrary to the Union's assertions, it is not prospering in any economic sense and in fact receive State Aid to Distressed Cities.

As to comparables, the City urges that the comparables extend only to the cities of Gloversville, Cohoes, Watervliet, and Johnstown. The City rejects the Union's attempt to include Saratoga Springs and Glens Falls as comparables. The record shows, according to the City, that neither of these two cities is comparable to the City regarding either income or poverty levels. Both cities, the City asserts, are far wealthier than the City of Amsterdam. Within the relevant comparables, the City claims that a comparison would show that the Union received salaries in fiscal year 1997-98 which, on average, were either above or slightly below, depending on years of service, the salaries of firefighters in the comparable municipalities.

Therefore, the City urges the Panel to conclude that the Union should receive reasonable wage increases for the Award period, and that the City's position in this regard must be

considered far more reasonable than the Union's proposals in view of what other City bargaining units have received and in light of all other relevant evidence including the City's current fiscal condition.

The Panel will first focus on comparable jurisdictions. In determining the appropriate comparable communities, the Panel has considered the evidence and arguments brought forward by the Parties. As can be seen, both Parties agree that the comparables should include the cities of Cohoes, Gloversville, Johnstown, and Watervliet. The Parties disagree, however, as to whether Saratoga Springs and Glens Falls should be included in this universe of comparables.

The Panel agrees with the City that the Cities of Glens Falls and Saratoga Springs do not belong in the list of comparable communities. Examination of the record reveals that Mr. Decker, on behalf of the Union, stated that Saratoga Springs was included essentially because it fell within the Albany Metropolitan Statistical Area and that Glens Falls fell within the Greater Capital District Area. Moreover, both Cities, as Mr. Decker noted, have full-time firefighting forces. But, as the City observes, Saratoga Springs and Glens Falls, unlike the other Cities listed in the comparables, have a far greater per capita income, median household income, and median family income than does the City of Amsterdam. The Panel concludes that both Glens Falls and Saratoga Springs must be excluded from the comparables because their significant differences in terms of income and poverty levels from the City of Amsterdam and the other communities listed in the comparables.

When the Panel focuses on the four other Cities in the comparables, it can see that for fiscal year 1997-98 Union members received salaries that were either slightly above or slightly below, depending on years of service, the salaries of Firefighters in these comparable

communities. Accordingly, the Panel concludes that the statutory command that a comparison be made with comparable communities does not cause the Panel to conclude that the Union members are not fairly compensated in comparison to Firefighters in comparable jurisdictions.

Having made the observation in the preceding paragraph, the Panel is nevertheless obliged to state what might be considered obvious, namely that Firefighters engage in a particularly hazardous form of employment that calls for significant physical, educational, and mental attributes together with the need for constant upgrading of and training for necessary skills. In addition, and again to state the obvious, the public must have great reliance on the competent performance of Firefighters' duties if the public's interest and welfare is to be protected. In other words, Firefighters perform important and dangerous jobs and should be compensated accordingly.

Turning to the City's ability to pay, the Panel does note that the City is included among the municipalities that receive State Aid to Distressed Cities. Recently, the City's bond rating was reduced from a Baa2 to a Baa3. On the other hand, the City recently reduced taxes by .51 per \$1000. of assessed value, and, as the Union has noted, the City's overall financial picture does indicate an ability to pay reasonable wage increases to Firefighters. The City's financial health will not be placed in peril if the City is obliged to reasonably increase the wages of Firefighters for the two year Contract period.

The amount of the increase that can be considered reasonable is dependent on an analysis of how the City has treated other bargaining units. This Panel agrees with the City that it is appropriate for the City to engage in pattern bargaining. The Panel observes that the City entered into agreements with five of its six other bargaining units for fiscal year 1998-99, with

each of the five units taking a 3% wage increase. For fiscal year 1999-2000, the two units that have entered into agreements took a 3% (Police) and 2% (ATU) increase respectively. In terms of public safety units, beginning with fiscal year 1995-96, the City has treated public safety Unions equally regarding wage increases. While the Panel is not unmindful of the Union's arguments concerning what it perceives to be a long standing historical disparity with the Police Union, the Panel is strongly persuaded that the concept of pattern bargaining is appropriate for this Panel to consider together with the statutory criteria in section 209.4 of the Civil Service Law. Accordingly, the Panel's Award for salary, while made in consideration of all the statutory criteria, has been, in part, influenced by the salaries paid to the City's Police personnel.

### **SALARY AWARD**

Article III, Salaries and Appendix C shall be amended as follows:

Effective July 1, 1998, 3% wage increase;  
Effective July 1, 1999, 3% wage increase.

### **LONGEVITY (Union Proposal No. 7)**

The Union notes that each Firefighter under the current Contract receives \$250.00 after nine years of service, an additional \$250.00 after thirteen years of service, and an additional \$550.00 after seventeen years of service. The Union observes that a Firefighter with twenty years of service thus receives a longevity payment of \$1,050.00 annually.

The Union seeks to increase each longevity increment by \$200.00 so that a Firefighter would receive \$450.00 after nine years of service, an additional \$450.00 after thirteen years of service, and an additional 750.00 after seventeen years of service. Under this increase, a Firefighter with twenty years of service would receive a total of \$1,650 per year for the longevity increment. The City argues that no need has been established for an increase in longevity.

The Union puts forth that longevity must be considered an award and incentive to a Firefighter and serves the purpose of retaining more experienced and knowledgeable personnel on the Department. According to the Union, this concept is particularly critical to the Amsterdam Fire Department because of the large number of younger Firefighters on the force. The Union states that the Amsterdam Firefighters do not fare well when their longevity is compared to the comparables. The increment increase sought herein, the Union claims, will place the Union second and third at twenty and twenty-five years of service respectively, in terms of the other comparables.

The City contends that the Amsterdam Firefighters have the highest longevity cap of comparable jurisdictions. It also argues that the total cost of this proposal would be \$13,800 annually. The City finds no justification for the Union's increase and thus resists it in all respects.

The Panel concurs with the Union that longevity payments not only reward Firefighters for their years of service but also assist the City in retaining a more experienced and knowledgeable component of Firefighters. This observation is particularly apt in light of the large number of younger Firefighters in the City's Fire Department. Union members rank last in longevity in the twenty and twenty-five years of service category among firefighters in the

comparable communities. It is clear to the Panel that the City Firefighters require a fairly substantial increase in longevity payments in order for a fair ranking in the comparable communities and to accomplish the salutary purposes of the longevity payments.

### **LONGEVITY AWARD**

Article III, Longevity shall be amended effective July 1, 1999, as follows:

9 years of service - \$ 500.

13 years of service - \$ 750.

17 years of service - \$1,000.

### **HEALTH INSURANCE(Union Proposals Nos. 4 & 6)**

Two proposals fall in this category. The first proposal relates to the health insurance contributions presently made by the Union members. The second proposal involves payment of health insurance after retirement for Union members hired after August 2, 1994.

The Union notes, as to health insurance contributions, that the current Contract calls for a 2.5% contribution by members of the Union as of July 1, 1995, to health insurance, with increases and payments based on the five year Driver position.. The Union notes the testimony of Firefighter Michael De Pasquale, Union President, that the annual contribution of a Firefighter for single coverage is \$880.44 and \$980.44 for family coverage. According to the Union, the record establishes that members of the Union assisted the City in the 1992 negotiations by agreeing to contributions to health insurance under a scheme where the contribution amounts, unlike other Unions, continue to rise. The Union claims that the

Amsterdam Firefighters pay the highest contribution toward health insurance of any City employee, and that the Mayor and Common Council Members currently make no contributions to their annual health insurance premiums. The Union seeks weekly contribution rates of \$7.00 for single coverage, \$8.00 for two person coverage, and \$9.00 for family coverage.

On retirement health insurance, the Union notes that no provision currently exists in the Contract for health insurance for retirees although the City continues to pay whatever health insurance benefits that the Firefighter was receiving at the time of his retirement. The Union also notes that, on December 16, 1997, the City agreed with the Police that all members hired on or before December 31, 1997, will be eligible for health insurance upon retirement. The Union proposes that all employees who retire after July 1, 1998, shall be entitled to health insurance in effect at the time of the retirement and said health insurance shall be provided at no cost to the retired employees. The Union states that no cost will be incurred by the City until the first of the four Firefighters affected by a 1994 resolution of the City retires, which would most likely be twenty years after 1997.

The City observes that the Union's proposal on health insurance contributions, if implemented, would cost the City \$518.00 per individual annually, or \$18,648.00 annually for the entire bargaining unit. The City notes that the State Comptroller's Municipal Advisory Review Team recently reviewed the City's finances and made a number of recommendations concerning fiscal improvements. Among these recommendations, the City notes, was a recommendation that the City increase employee health insurance contributions. According to the City, the Union's proposal should be rejected regarding health insurance contributions.

As to retirement health insurance, the City claims that the Union has not set forth any

adequate justification for the proposal. The City notes that the stipulation of settlement entered into between the City and the Police Unit was one in which the City agreed to provide health insurance upon retirement to members hired on or before December 31, 1997. Thus the City observes that members of the Police Unit hired after that date are not eligible for the benefit, although the Union's proposal seeks to provide retiree health insurance benefits to all members who retire after July 1, 1998, which the City terms a completely different benefit than the one received by the Police Unit.

The Panel has closely considered the Union's proposals on health insurance. It is the Panel's belief that the present Agreement between the Parties concerning health insurance contributions need not be modified. Under the current contractual arrangements, Firefighters contribute 2.5% of the five year Driver salary or \$830.00 annually for the cost of health insurance. The Panel finds no justification for altering that contribution as sought by the Union, particularly in view of the costs that would be visited on the City if the contribution was changed and the need for the City to tighten the rein on health insurance costs as seen in the recent State Controller's Municipal Advisory Team recommendation.

As to retiree health insurance, the Panel believes that there is a need to provide health insurance benefits for retirees. The Panel notes, as have the Parties, that on December 16, 1997, the City did enter into an Agreement with the Police that all members of the Police Unit hired on or before December 31, 1997, would be eligible for health insurance upon retirement. The Panel believes that a similar benefit should be afforded members of the Union.

### **HEALTH INSURANCE AWARD**

The Union's proposal concerning health insurance contributions is not accepted by the Panel. As to health insurance benefits for retirees, Article IV of the Contract is to be amended by adding a new paragraph to read as follows:

All employees hired prior to June 30, 2000, shall be entitled to health insurance coverage upon retirement, at no cost to the employee. Any employee hired after July 1, 2000, and who retires with at least 20 years of service with the City shall be eligible for single coverage retiree health insurance, provided the employee shall pay whatever current employees are paying in contribution to such health insurance. Such contribution shall change should the Parties negotiate a change for current employees.

Those employees hired after June 30, 2000, who retire with at least 20 years of service with the City and have two person or family coverage, shall be responsible for 50% of the premium cost of the two person or family coverage.

### **RETIREMENT INCENTIVE BONUS (Union Proposal No. 17)**

The Union observes that the current Contract does not provide for any retirement incentive bonus. Its proposal is that any member who retires with more than twenty years of service shall be entitled to a \$5,000.00 retirement incentive. The Union again relies on the testimony of Union President De Pasquale that this incentive would help retired members "weather the lag" between the time the member is taken off the payroll and the time he or she begins to receive retirement benefits, which could be as long as six to eight weeks. The Union observes that the Police Unit achieved a retirement incentive that calls for a \$5,000.00 bonus to be paid to Police officers who retire after twenty years of service. According to the Union, this

proposal would result in no immediate cost to the City, and that, in fact, the City would realize considerable savings upon retirement of the senior Firefighter at the top paid grade when he is replaced with a new hire who would start at a much lower salary.

The City notes that it did negotiate a \$5,000.00 retirement incentive for members of the Police Unit but also observes that, after December 31, 1998, the incentive was available only to employees who retired between their twenty and twenty-first years of service. The City notes that the Union's proposal does not contain these additional eligibility requirements. According to the City, it would not be adverse to the proposal provided it contained the same eligibility requirements that are found with the Police Unit retirement incentive.

The Panel believes that little question exists but that the Firefighters should receive a retirement incentive as did the Police Unit. Thus, the Panel concurs with the Union that such a retirement incentive should be added to the Parties' Agreement, but also concurs with the City that it should contain the eligibility requirements that are found in retirement incentive in the Police Unit.

#### **RETIREMENT INCENTIVE AWARD**

The Agreement shall be amended by adding retirement incentive such that anyone who retires between the 20th and 21st years of service, upon actual retirement, shall receive \$5,000.00. Any employee who retired on or after July 1, 1998, with more than 20 yrs of service shall also be entitled to the \$5,000.00.

**EMT AND A-EMT COMPENSATION (Union Proposal No. 10)**

The Union observes that the current Contract provides that EMTs receive \$600.00 which is paid in June of every year. The Union proposes that the EMT compensation be increased to \$1,000.00 per year and A-EMTs, who receive only EMT compensation at this time, receive \$2,000.00 annually. The Union notes that emergency medical services are offered by the Fire Department and that there are currently two levels of EMTs', EMT and Intermediate/Critical Care EMT known as A-EMT. Further, the Union observes that there are twenty-seven EMTs and three A-EMTs with six more A-EMT's now in training. Further, the Union observes that the A-EMT carries with it more responsibility and more training.

According to the Union, its proposal is justified since emergency medical services are the fastest growing of the Fire Department's calls and that the Fire Department responds to more emergencies service calls than any other of the comparables. Further, the Union relies on the fact that much of the substantial training for EMTs is uncompensated. The Union points to the testimony of Firefighter Peter McNamara that, when he analyzed comparable Fire Departments, only Watervliet had been involved in emergency medical services as long as the City's Fire Department and was the only comparable that performed such service at the same level as the City's Fire Department. The Union claims that the compensation provided to Watervliet's EMTs and A-EMTs would be in line with the Union's proposal. The Union also notes, as per the testimony of Firefighter McNamara, a number of Cities charge residents for emergency medical service, which could provide a new and substantial reserve for the City. The cost of this demand, the Union observes, is \$13,800. annually.

The City disagrees with the Union's cost estimate of this demand. According to the City, an additional \$27,800 would be spent if the proposal were implemented. This would mean, the City asserts, that the proposal would represent an increase of approximately 2.34% of the payroll. The City thus resists the proposal.

The Panel finds that the EMTs and A-EMTs render a valuable service to the City, and, to place themselves in a position to render this service, the EMTs and A-EMTs do engage in a substantial amount of training, much of which is uncompensated. The Panel also finds that the service rendered by EMTs carries with it increased stress for EMTs and A-EMTs as well as an increased risk of exposure to AIDS, hepatitis-B, and tuberculosis. In the Panel's estimation, the EMTs and A-EMTs should receive greater compensation. In making an award of additional compensation, the Panel must also, however, be guided by the fiscal constraints that the record amply demonstrates are visited on the City.

#### **EMT AND A-EMTs AWARD**

Article XXIX of the Agreement shall be amended to read as follows:

All Emergency Medical Technicians (EMT's) shall receive, effective July 1, 1999, \$700.00. All A-EMT's shall receive, effective July 1, 1999, \$1,000.00. This compensation shall be paid each year.

**CODE ENFORCEMENT PROGRAM (City Proposal No. 7)**

The City seeks to implement a Code Enforcement Program to be performed by members of the Fire Department. It notes that presently code enforcement of new buildings is handled by a building inspector, but that code enforcement of existing multiple dwellings and places of public assembly has been substantially compromised because the City is shorthanded. According to the City, the record establishes that there are no regularly scheduled inspections, with the Fire Chief and two civilians presently operating on a complaint basis only. The City observes that there are 1,600 multiple dwellings in the City that need to be inspected.

Moreover, the City, relying on the testimony of Fire Chief Liberti, states that a number of benefits exist to support a Code Enforcement Program that would include safer buildings, increased knowledge by the Department of the layout of various buildings if a fire should occur, and a deterrence to building owners to allow buildings to become rundown, which would in turn increase the physical appearance and property values of the City. The City observes that the job description of a Firefighter lists "fire prevention" in its general statement and "inspects buildings as directed" under "examples of work." In the City's estimation, since code enforcement is part of a Firefighter's job, no additional compensation should be provided for such work.

According to the Union, the City's demand regarding a Code Enforcement Program is lacking in detail, which has made it difficult for the Union to determine what the City actually wants. The Union claims that the testimony of the Fire Chief offered in support of the Code Enforcement Program did not provide a convincing rationale for an Award that would grant the City its demand. The Union posits that, if it had been given detail regarding the Code

Enforcement Program, the matter could likely have been successfully negotiated. The Union raises its concern about compensation under any Code Enforcement Program as well as concerns about training, scheduling issues, and work load issues. The comparables, in the record, according to the Union, do not support the City's proposal. The Union also states its fear that issues could develop with CSEA if the Code Enforcement Program is awarded.

The Panel believes that the City has offered a convincing need for the Code Enforcement Program. Additionally, the Panel finds that such a Program would be consistent with the mission of the Fire Department and compatible with the nature of work that is encompassed within the scope of a Firefighter's duties. It is the Panel's further belief that the Code Enforcement Program, in terms of details, is best left to the discretion of the Fire Chief as part of his managerial prerogative. However, the Panel does not concur with the City's position that the implementation of a Code Enforcement Program should not result in additional compensation to Firefighters performing duties in said Program. It is clear to the Panel that the Code Enforcement Program will bring additional work to the bargaining unit and considerations of equity demand that additional compensation be paid.

### **AWARD ON CODE ENFORCEMENT PROGRAM**

The Agreement shall be amended by adding a Code Enforcement Program as follows:

Code Enforcement Officers will engage in the following duties:

Multiple dwelling inspections  
Public assembly postings  
Fire Safety Inspections

### Rental Certificates

There will be an minimum of six Code Enforcement Officers. The Code Enforcement Officers will equally split a total of \$12,000.00. In the event six (or whatever number deemed necessary by the Fire Chief) Firefighters do not volunteer for the Code Enforcement Program the City will mandate such work by inverse order of seniority.

The Code Enforcement Officer program is open to all members of the bargaining unit.

If the Code Enforcement Officer is off duty and court time is required, the Officer shall be called back to duty to appear in court. The Officer shall be compensated a minimum of four hours of overtime. However, if a Code Enforcement Officer is on duty and must appear in Court, one member shall be called back to duty to fill the Enforcement Officer's assigned position at a minimum of four hours overtime.

### **GRIEVANCE PROCEDURE (City Proposal No. 1)**

The City proposes to amend Article VI of the Parties' Contract, the "Grievance Procedure." Other than cleaning up what the City identifies as "sloppy language," the proposal, the City observes, would make a significant change in that the Union would present a grievance appeal to the Mayor rather than a committee consisting of the Mayor and a Public Safety Committee. According to the City, this proposal would add clarity to the grievance procedure and "streamline the process."

In its post-hearing submission, the Union states that its has no objection to the proposal. Accordingly, the Panel will adopt the proposal.

**AWARD ON GRIEVANCE PROCEDURE**

Article VI of the Agreement shall be amended by changing the language thereof to read as follows:

In the event of a dispute between the parties of this Agreement involving the interpretation or application of any provisions of the Agreement, either party shall have the right to resolve the dispute in the following manner:

1. Any grievance must be presented to the Fire Chief within ten (10) calendar days from the date the grievance arose or the employee had knowledge of the occurrence of the grievance. The grievance statement shall contain the specific nature of the grievance and the facts relating thereto, as well as the specific contract provisions allegedly violated. The grievance shall be discussed with the Fire Chief or his designee and with the representatives of the Union. If a particular employee is involved, he shall have the right to appear at such discussions. Within five (5) calendar days after meeting with the Chief, the Chief shall provide his response to said grievance in writing to the Union's designated representatives.
2. If the grievance remains unsettled, the Union may present an appeal to the Mayor within five (5) calendar days from receipt of the Chief's decision, or within five (5) calendar days from when that decision should have been received. The Mayor shall provide his response in writing, within ten (10) working days of when the grievance appeal was received.
3. In the event that the grievance is not settled at the Mayor's stage, the Union may, within five (5) calendar days, file its demand for arbitration with the New York State Public Employment Relations Board. All of the Rules of the New York State Public Employment Relations Board will be followed for any arbitration which follows. The cost of arbitration shall be borne equally by both parties. No arbitrator functioning under this step of the grievance procedure shall have any power to amend, modify or delete any provisions of this Agreement. Nothing shall be construed to allow the arbitrator to usurp or otherwise derogate the power and authority given by statute to the City.

**SICK LEAVE (City Proposals Nos. 2 & 3)**

The City advances two sick leave proposals. The first proposal seeks to amend Article XI Section 2 by reducing the maximum accumulation of sick leave from 240 days to 100 days for all employees hired after July 1, 1998. The City claims that this demand, although savings can not now be calculated, would result in substantial savings to the City in the long run. The City notes that, while the Police Unit also is entitled to maximum sick leave accumulation of 240 days, newly hired employees of the Police Unit, effective October 16, 1997, are entitled to maximum accumulation of 180 days. Further, the City observes that all of the comparable municipalities receive far less maximum sick leave accumulation than do the City Firefighters.

The City's second sick leave proposal is to reduce the sick leave pay out from 30% to 20% for all employees hired after July 1, 1998. In the City's estimation, this proposal would likewise result in significant savings to the City in the long run.

The Union, as to both proposals, states that its main objection is that both proposals would punish the younger members of the Fire Department and create a division within the Union ranks as between the younger and older members. Specifically, the Union states, if adopted, the proposals would already constitute discrimination against Firefighter Santiago, the last Firefighter the City has hired.

The Panel is not unmindful of the City's need to engage, when appropriate, in cost savings measures. However, the Panel notes that the City has candidly acknowledged that it could not calculate any immediate cost savings for either proposal. The Panel believes that there

is not an adequate justification that has been set forth by the City to support the adoption of either proposal whereby the negotiated sick leave benefits would be reduced. The Panel will therefore not accept this proposal.

**AWARD ON SICK LEAVE**

The City's proposals on sick leave are not accepted by the Panel.

**VACATION OR KELLY DAYS (City Proposal No. 5)**

The City seeks to modify the language in Article XVI, Section 3 of the Contract, which language presently states that "[o]nly two (2) men in a group will be allowed vacation or Kelly Days in the same period. (This does not include personal days.)" The City's proposal would allow only one employee in a group to use vacation and/or Kelly Days in the same period. According to the City, the testimony of Chief Liberti set forth the legitimate reasons behind the City's proposal. According to the City, the primary purpose of the proposal is to cut down on overtime costs. The City alleges that, had the modification been in place during 1998, it would have saved \$14,090.79. The City acknowledges that the modification would limit the ability of some Firefighters to take vacation when they want it. Nevertheless, the City contends that members would not be unduly burdened and vacation time would be spread around more evenly if the proposal were to be accepted.

The Union resists the proposal because of the adverse effect it would have on

Firefighters' ability to select vacation time other than in the less desirable months of January, February, March, and November. In the Union's estimation, the City's desire to reduce overtime of Firefighters must be called into question because of the far higher overtime figures one finds for the Police Unit and the Department of Public Works. In addition, the Union submits that the City, in pursuing this proposal, has overlooked other ways to reduce overtime that would not have the adverse impact on the Firefighters. These alternatives, the Union maintains, would include the hiring of new Firefighters and scheduling of training in months other than June, July, and August. The Union also states that staffing shortages have not been caused by its members abusing sick leave, and that the personal time provisions of the Contract are such that the Chief is given adequate notice to address staffing needs.

While the Panel understands the City's desire to reduce overtime costs, the Panel finds that other alternatives do exist for the City to reduce overtime, for example rescheduling peak training periods. Moreover, the Panel notes that vacation or Kelly Days are valuable rights to members of the Union and this proposal, if accepted, would have a substantial adverse impact on Firefighters with the least amount of seniority in each group. The Panel agrees with the Union that such Firefighters would in all likelihood be required to choose vacation time in the less desirable months of January, February, March, or November. On balance, the Panel does not find that the proposal is necessary for reduction of overtime costs and that the least senior Firefighters should not have their right to vacation diluted based on the record before the Panel.

**AWARD ON VACATION OR KELLY DAYS**

The City's proposal is not accepted by the Panel.

**CONCLUSION**

The above constitutes the award of this Interest Arbitration Panel together with those items previously agreed to by and between the Parties ( as detailed on page 5 herein).

DATE: \_\_\_\_\_

*1/19/2008*

\_\_\_\_\_  
THOMAS N. RINALDO, ESQ.,  
PUBLIC MEMBER AND CHAIRMAN

*Timothy Murphy 1/14/08*  
\_\_\_\_\_  
TIMOTHY MURPHY  
EMPLOYEE ORGANIZATION MEMBER

*Elayne Gold 1/13/08*  
\_\_\_\_\_  
ELAYNE G. GOLD, ESQ.  
EMPLOYER MEMBER