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NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD
INTEREST ARBITRATION PANEL

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In the Matter of the Arbitration :
:
- between - :
City of New Rochelle : FINAL and BINDING
("The City") : DETERMINATION
- and - : and
New Rochelle Uniformed Firefighters Association : AWARD
("The UFFA or "Union") :
RE: Case No. 201-022; M 201-064 :
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By: Tri partite Arbitration Panel
Theodore H. Lang, Ph.D., Neutral Chairperson
Vincent Toomey, Esq. City Designee
Richard S. Corenthal, Esq., Union Designee

SEP 20 2002

APPEARANCES:

For the City:

- Vincent Toomey, Esq., Counsel
- Thomas Marcoline, Esq., Law Office of Vincent Toomey
- Charles Strome III, City Manager
- Matthew W. Iarocci, City Personnel Director
- Raymond F. Kiernan, Fire Commissioner
- Howard Rattner, City Finance Commissioner

For the UFFA:

- Richard S. Corenthal, Esq, of Meyers, Suozzi, English and Klein, P.C.
- Earnest J. Horney, Jr. UFFA President
- Byron O. Gray, Vice President
- Lt. Matthew Ameroso, Secretary / Treasurer
- Kevin J. Decker, Expert Witness
- Daniel J. Stark, Consultant on Negotiations
- Robert J. Zaccagnino, Michael Bartholomew and Lt. Stephen DuBois, Trustees

INTRODUCTION:

The New York State Public Employment Relations Board ("P.E.R.B."), on or about December 19, 2001, invoked the provisions of the Civil Service Law, Section 209.4 and designated the Undersigned Public Arbitration Panel for the purpose of making a just and reasonable determination of this dispute. This "Opinion and Award" was prepared by the Public Panel Member and Chairperson of the Panel, Theodore H. Lang.

A. HISTORY OF THE IMPASSE

The latest negotiated Agreement between the UFFA and the City covering a unit consisting of "... all regular full time employees ... who are fire fighters, fire lieutenants, and fire captains and ... the fire equipment mechanic" was for a four-year period from January 1, 1997 to December 31, 2000. The parties were unsuccessful in reaching agreement for a successor contract in seven negotiating sessions and in, fact, the parties reported having reached no agreement on any term or condition of employment raised by either party during the negotiations. Efforts of the PERB-appointed Mediator were also unsuccessful. On or about October 17, 2001, the UFFA submitted its Petition for Compulsory Interest Arbitration on a total of eight numbered proposals, and on October 31, 2001, the City submitted its Response to Petition for Compulsory Arbitration, in which the City challenged the submission of certain UFFA demands to interest arbitration, rejected all demands made by the UFFA and submitted for decision and award twenty-eight numbered City proposals; concurrently the City filed an improper practice charge against the UFFA.

Under date of April 22, 2002, prior to the commencement of the first hearing day, the parties settled the improper practice charge against the Union (Case No. U-22941) in the following language:

- 1) The Union withdraws proposals number seven regarding Union activities and proposal number eight regarding vacations from the interest arbitration proceeding in PERB Case No IA 201-022; M 201-064.
- 2) The City withdraws the improper practice charge in PERB Case No. U-22941 with prejudice.

Hearings were held on April 22 and 23, May 13 and June 25 at the City Hall. The City and UFFA had ample and full opportunity to submit exhibits, examine and cross examine witnesses and make oral argument. There were offerings of 88 City exhibits and 54 UFFA exhibits. The UFFA presented testimony by David Stark; Consultant on Negotiations, Scott Ferguson, Deputy Fire Chief, Lt. Stephen Paul Iarocci, Sr., Health and Safety Officer, Lt. Stephen DuBois, Earnest Horney, UFFA President, Kevin R. Decker, Expert Witness, and on rebuttal Lt. Matthew Ameroso. The City presented testimony by Matthew Iarocci, City Personnel Director and Howard Rattner, City Finance Commissioner.

The parties made no arrangements for a Reporter. The Chairman's notes and the exhibits admitted by the Panel constitute the Record of the proceeding. After the four days of hearing, briefs were received by the Chairperson on or about August 6, 2002.

The Panel met in executive session on August 13, 2002.

B. LEGISLATIVE STANDARDS

In regard to all items, the Panel has considered seriously the legislative standards applicable to compulsory interest arbitrations pursuant to §209.4 of the Civil Service Law, which

provides in part:

(v) the public arbitration panel shall make a just and reasonable determination of the matters in dispute. In arriving at such determination, the panel shall specify the basis for its findings, taking into consideration, in addition to any other relevant factors, the following:

- a. Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with 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.

C. PROPOSALS SUBMITTED TO THE PANEL

Following is a listing of the proposals submitted to the Panel:

UFFA Items 1 to 6

1. Compensation 8% increases on January 1, 2001 and January 1, 2002 and increases in longevity payment.
2. Increase in EMT Differential.

3. Reduction in Work Week from 39.2 to 37.8 hours.
4. Increase in personnel leave days.
5. Sick leave changes.
6. Health Insurance.

City Items 1 to 28

1. Payment Deductions for Union Dues.
2. Union meetings in fire station.
3. Leaves to attend Union conventions or functions.
4. Union office.
5. Overtime.
6. Increase work week from 39.2 to 40 hours.
7. Holiday. Time off option.
8. Reduction of personnel leave to one day.
- 9 and 10. Sick Leave.
11. Sick leave bonus.
12. Health Insurance Plan Notification of any family coverage.
13. Health Insurance City payments for Retiree Committee.
- 14 and 15. Grievance and Arbitration Procedure.
16. Probationary Appointments.
17. Delete Uniform Cleaning Allowance.
18. Delete Compensation for Loss of Personnel Items.
19. Delete Emergency Report Service.
20. Housing inspections.
21. Mutual leaves.
22. Special leaves of Absenteeism.
23. Manning Fire apparatus.
24. Station assignment of UFFA President and Secretary.
25. Section 207- a of General Municipal Leave.
26. Storage of UFFA equipment.
27. Add a drug testing policy.
28. Insurances Law Sections 553 & 554.

D. THE MOST COMPARABLE FIRE DEPARTMENTS

One of the principal relevant legislative standards to guide the public arbitration panel to determination of the matters in dispute is a comparison of the wages, hours and conditions of employment of the firefighters in the City with wages, hours and conditions of other firefighters

performing similar duties under similar working condition. This is a comparison of “apples” with “apples.”

In this regard, the City summarized its position, as follows:

While determining the relevant universe for purpose of comparability is often a difficult task, it is not in this case. There are two primary reasons for that. The first is that the City has a well-established pattern of almost lock step internal comparisons among its seven collective bargaining units. Secondly, it has been firmly established that the relevant universe for purposes of comparability in interest arbitration matters involving New Rochelle is limited to the cities of Mount Vernon & White Plains.

Over twenty-five years of interest arbitration awards and fact-finding reports concerning the City and its uniformed services have unanimously confirmed that inquiries regarding comparability are limited to this three-city comparison is also utilized in Mount Vernon and White Plains, and is, in fact, one of the most firmly established universe of comparability for purposes of interest arbitration in this State.

The UFFA compares New Rochelle Firefighters to other firefighters in Westchester County, including Mt. Vernon and White Plains, and especially highlighting Yonkers.

The Chairman of this Panel, based upon historical comparisons in interest arbitrations, firefighters and police, and the comparisons with the six cities in Westchester County, finds White Plains, New Rochelle and Mt. Vernon most comparable in populations and size of paid fire personnel. Yonkers is approximately three times larger in population and size of fire personnel and is too large to belong in this group and Rye and Peekskill are more than 60% smaller in population and over 90 % smaller in paid fire personnel, and are too small to belong in

this group. Comparison outside the tri-city group of New Rochelle, White Plains and Mt. Vernon, will be accorded much less weight than comparisons within this group.

E. TERM OF THIS AWARD

Both parties have fashioned their proposals, evidence and briefs on a two-year period.

The latest agreement between the parties expired on December 31, 2000.

Accordingly, the period of this AWARD shall be for the period from January 1, 2001 through December 31, 2002.

F. PROPOSALS APPROVED IN WHOLE OR IN PART

The Panel has agreed on an AWARD encompassing only increases in compensation, including increases in longevity payments, and changes in City contributions to health insurance of retirees. These are supported by comparative data under § 209.4 (v) as cited above, by the interest and welfare of the public and the financial ability of the public employer to pay (See § 209.4 (v)b.), by the peculiarity of firefighting work as compared to other trades and professions (See § 209.4 (v) c) and the history of negotiations of financial packages and other terms and conditions of employment (See § 209.4 (v) d).

UFFA Proposal 1 on Compensation and Longevity Payments

The UFFA proposes the following:

“Compensation: Increases in Annual Salaries by 8.0% on January 1, 2001 and 8.0% on January 1, 2002, and change the basis for Longevity to percentages of Annual Salaries rather than flat dollar amounts.

“Modify the Annual Salaries wage scales in Article 4 Section 1 a to be:

	<u>1-1-2001</u>	<u>1-1-2002</u>
Fire Fighter 1st Year of Service	\$29,790	\$32,173

2nd Year of Service	37,142	40,113
3rd Year of Service	44,496	48,056
4th Year of Service	51,849	55,997
5th and following Years Of Service	59,201	63,937
Fire Lieutenant	71,037	76,720
Fire Captain	82,403	88,995

“Modify Article 4 Section 1b to read:

Longevity: An employee shall be entitled to a Longevity payment above his Annual Salary as provided in Section 1a hereof. The Longevity payment shall be calculated as a percentage of the employee’s Annual Salary as follows:

	<u>Percentage of Annual Salary</u>
After 5 Years of Service	1.5%
After 10 Years of Service	2.0%
After 15 Years of Service	2.5%
After 17 Years of Service	4.0%”

The longevity proposal seeks to convert four flat rates to four percentage rates, as follows:

	From Yr 2000 <u>flat rate</u>	To Yr. 2001 <u>%</u>
After 5 Years of Service	\$700	1.5%
After 10 Years of Service	900	2.0%
After 15 Years of Service	1100	2.5%
After 17 Years of Service	1800	4.0%

In regard to compensation the City’s position is that it cannot afford any increases in compensation or in longevity payments.

In support of its position, the UFFA highlights facts or argument, as follows:

1. The City has agreed to 3.5% annual increases with each municipal labor union that it settled with, namely:

Date of Signing of
Agreement or Stipulation

C.S.E.A. New Rochelle Unit Local 1000, AFSCME, AFL-CIO	10/31/01
C.S.E.A. School Crossing Grounds Unit	11/28/01
C.S.E.A. Public Library Unit	12/11/01
AFSCME Local 663 (Blue Color Unit)	02/20/02
Superior Officers Association (Police)	03/06/02

2. Firefighting, as confirmed by tragic events of September 11, 1001, is more dangerous and more difficult than ever before. New Rochelle firefighters responded to the terrorist attack at the World Trade Center to support the rescue effort.
3. As workload has increased, staffing has decreased. In 1991, there were 173 firefighters, decreased to 160 un 2000 and to 155 in 2002. This alone justifies an increase in compensation.
4. The starting salary of the firefighter in 2000 at \$27,583 is a disgrace and would be shocking if continued into 2002.
5. In New Rochelle, firefighters offer extensive Emergency Medical Service, which Mt. Vernon and White Plains do not provide or "provide in a much more limited capacity."
6. New Rochelle has special hazards for firefighters not present in Mt. Vernon and White Plains, such as a greater waterfront, I.S. 95 waste spills and accidents, Metro North train fires, high rise buildings (such as New Roc Center and Avalon apartments, 24 stories high and other higher planned Avalon apartments), and large box stores (such as Home Depot, Costco, and Linen and Things.)
7. White Plains firefighters received a \$2100 increase to reach parity with police plus a 3.2% increase on July 1, 2000, and a 3.5% increase on July 1, 2001, which is the equivalent of 3.2% and 3.6 % (\$2100) in 2001 and 3.5% in 2002. "Firefighters in New Rochelle are therefore entitled to a similar increase to bring their salaries in line with New Rochelle police, particularly when you consider that New Rochelle firefighters work harder and face greater risks than White

Plains firefighters. While it will not close the gap with police, the 8% salary increases proposed by the Union will decrease it."(Br. p. 12)

8. Mt. Vernon's four 2% increases in 2001 and 2002 result in a 8.24% increase in these two years.
9. The Panel should apply the external pattern with comparable firefighters, rather than the internal pattern of 3.5% received by City workers who are not firefighters. "3.5% salary increases will not bring the firefighters up to the salary levels of police officers in the City and will not allow the New Rochelle firefighters to keep pace with firefighters in comparable cities, such as White Plains and Mount Vernon." (Br.at p.18)
10. **"The City Has the Ability To Pay The Proposed Salary Increase"** "A city's claim of 'inability' to pay often means 'unwillingness' to pay." (Br. at pp 18, 19) The burden of proof of such inability must be borne by the City. The property tax cap was not imposed on the City against its will. "As the Court of Appeals has explained, a municipality cannot handcuff an arbitrator or fact finder with its own established priorities." "Even where rocky financial circumstances are shown, arbitrators have the power to set salaries at the appropriate level, notwithstanding the fact that doing so will require measures to cut costs or generate new revenues." (Br. p 22)
11. Financial ability has been assured by:
 - a. Sale of David's Island to Westchester County
 - b. Transfer out of City budget of New Rochelle Public Library Budget.
 - c. City adapted 2002 Budget includes a \$1,150,000 contingency appropriation.
 - d. City has exhausted only 24.3% of its State Constitutional Tax Limit whereas Mt. Vernon uses 58.6% and White Plains 27.8%.
 - e. New Rochelle general fund balance at the end of 2001 was \$5,138,401.
 - f. The City failed to increase its property tax revenues, as permitted by its "property tax cap" in years 1995, 1996, 1998 and 1999 foregoing \$ 6,499,120 in revenues.
12. "The Union wants to change the way in which longevity payments are calculated from a flat amount to percentage of salary to ensure that longevity payment increase consistent with contractual salary increases. Otherwise, firefighters will receive less in longevity overtime, defeating the purpose of the longevity provision. The percentage amounts requested by the Union are reasonable in comparison to firefighters in other municipalities." (Br. p 32) This proposal would still leave New Rochelle firefighter below the longevity payments in White Plains.

In supporting its position of no increases in compensation, the City presents facts and argument that the "ability to pay" criterion supports the City's position, as follows:

1. "The City should not be forced to jeopardize its financial future or engage in fiscal irresponsibility to meet union bargaining demands." (Br. p 5)
2. "The City of New Rochelle is the only municipality in the State of New York with a legislatively-imposed cap on property taxes. The City is prohibited from increasing property taxes more than the amount of the Consumer Price Index for the New York metropolitan region for the preceding year. The property tax cap was imposed on the City by the New York State Legislature in exchange for the right to increase the City's sales tax rate by 1%." "The City's attempts to have the property tax cap removed have not been successful." (Br. p. 6) The City's "projected revenues from property taxes for 2002 are nearly \$1 million less than its property tax revenues in 1993 due to the tax cap and a decrease in the taxable assessed value of property in the City over the past decade." The cap now applies to both tax rate and tax revenue, whichever limit is reached first.
3. Sales tax revenues have remained flat "in the past five years," increasing only 2.7% in 2001 and project to increase by less than 3% for 2002.
4. Also, the City has received minimum State aid.
5. "The City's operating expenses for 2002 increased by approximately 4.5%" incorporating increases in pension, insurance, and health insurance costs.
6. The City's total fund balances has decreased annually as follows:

1998		12 million
1999		9 million
2000		7 million
2001		5.4 million
2002	projected	1.6 million

In 2003, the City projects that its 2002 fund balance would be insufficient to balance the 2003 budget, necessitating reductions in force or a new revenue source. The City had made reduction in staff in August 2001 and more reductions in 2002 of 15 positions, keeping 15 more vacant. The Finance Commissioner projects a deficit of between \$6 & \$8 million for 2003, absent a new revenue source.

7. The sale of David's Island is an unreliable source of one-time funds. "The proposed David's Island sale is still subject to approval and contingent upon the cost of

environmental cleanup of the island." (Br. p.11)

8. Removal of the library for the City budget would free about \$1.4 million for the City for 2002.
9. "...The amount of tax that the City hypothetically could have collected in past years can have absolutely no bearing on the Panel's determination regarding the City's current ability to pay, given the fact that such 'foregone revenues' cannot be recovered now and cannot be used as a source of revenue during the period covered by this interest arbitration proceeding." (Br. p 13)
10. "...The City's stifling tax cap, its four straight years of deficit and its depletion of its reserves, lead only to the conclusion that the City is in dire financial straits." (Br.p. 14)
11. "Finally, Mr. Decker testified that the City's Contingency Fund was \$1.15 million. As a percentage of the City's general fund, however, the Contingency Fund is de minimis and should be preserved for unforeseen capital expenses, particularly given the depletion of other resources for capital projects and liability coverage."(Br. p. 15)
12. "The City has a history of pattern bargaining with its employee organizations. The collective bargaining agreement with each of the City's seven unions expired on December 31, 2000. As with the other unions, the City was bargaining with the Union during late 2000 and into 2001. The City explained its financial condition to the Union during negotiations." "In 2001, the City was able to negotiate a collective bargaining agreement with five of its employee organizations. Each such union contract contained a 3.5% per year increase, with valuable give backs to the City. The Union, however, like the City's police officers, pursued interest arbitration seeking greater increases. Since that time, the City's financial condition has deteriorated markedly."(Br pp 16-17)
13. "If the Panel does decide to grant increases, however, the City contends that any such increase should not exceed 2% per year, and that any such increase must absolutely be matched with substantial give backs by the Union, such as, but not limited to, significant increases in number of hours worked per week, reductions in paid leave, and/or increases in retiree health insurance contributions." (Br.p. 32)

DISCUSSION ON WAGES AND LONGEVITY INCREASES

The Panel has reached the following conclusions in regard to wages and longevity increases based on the Record before it:

1. The City of New Rochelle willingly entered into an agreement with the State Legislature by seeking a special 1% increase in sales tax above other municipalities in the State and capping its ability to raise property taxes, first in 1993 to the December / December consumer price index for the preceding year on property tax rates and then in 1995 to the December / December c.p.i for the preceding year on property tax rates or property tax revenues, whichever cap was reached first. Although the City is far below its constitutional tax limit it has lost significant flexibility to increase property tax rates to meet its budgeting needs.
2. The City, over the past few years, has suffered reductions, in its total fund balance from \$12 million actual at end of 1998 to \$1.6 million projected at end of 2002.
3. Each year from 1994 through 2001, the City has, conservatively from a fiscal standpoint, anticipated a budget deficit of an average of over \$5 million higher than the actual surplus or deficit in the year; the smallest variance from the budget being \$2,854,346. The 2002 budget anticipates a budget deficit of \$3,690,000, which is projected to use up most of the \$5,462,331 fund balance at the end of 2001.
4. The Panel concludes that the City has the financial ability to pay for just and reasonable improvement in compensation and longevity payments to firefighters for the years 2001 and 2002 for the following reasons:
 - a. The City has reached agreements, concluded from October 31, 2001 through March 6, 2002, with all its unions, including police superior officers, except police officers and firefighters, both of which have opted for the interest arbitration process, to grant 3.5% increases in 2001 and 2002. The Panel finds it difficult to believe that the City did not include police and firefighters in its plans for salary increases for unionized employees.
 - b. The City projects a fund balance of \$1,600,000 by the end of 2002. Based on the experience of budgeting in the City since 1994, the projection should prove to be an over conservative low figure.
 - c. The City has commenced a number of steps, including selling David's Island and removing the New Rochelle Library from its City general fund budget.

4. In regard to longevity payments, the City has negotiated an agreement with police superior officers making no increase in the first three longevity payments, which are identical to the firefighters, but increasing the "17 yr and later" by \$150 in 2001 to \$1950 and \$150 in 2002 to \$2100.* Comparison is made of top step uniformed with Mt. Vernon firefighters at about \$1000 and White Plains firefighters at about \$2,600. The Panel will recommend \$150 increases in each of years 2001 and 2002 for firefighters, retaining the tri-city pattern within the two years of the this Award.

5. The wage increases granted to firefighters in Mt. Vernon for the two year term for 1/1/01 through 12/31/02 were

1/1/01	2%
7/1/01	2%
1/1/02	2%
7/1/02	2%

6. The wage increases for firefighters in White Plains for the two year term from 7/1/00 through 6/30/02:

7/1/00	3.2%, plus \$2100 increase in each member's base pay to establish parity with police
7/1/01	3.5%

7. Comparisons with the tri-city grouping in which New Rochelle falls justify increases greater than the internal model of 3.5% per year, yet it is possible to structure 4% annual increases in such way as to give consideration to the City's worsening fiscal situation.

8. The increases recommended below are in the judgment of this Panel, within the financial ability of the City to pay, even if this requires modification of City budgetary priorities. The firefighters are not to be deprived of a fair and reasonable increase because they chose their legal right to interest arbitration. They will retain the relative ranking of the City's firefighters among the tri-city grouping.

9. Adjustment of EMT differential is called for paralleling percentage increases in wages.

Taking all the above facts and arguments into consideration for this set of issues of wages and longevity increases, the Panel AWARDS as follows:

*Effective in the third year (1/1/03) there a third \$150 increase.

(1) 2% increase effective 1/1/01 on wages and EMT differential, rounded to the nearest dollar.

2% increase on wages and EMT differential effective 7/1/01 based upon 12/31/00 wages and 12/31/00 differential, rounded to the nearest dollar.

2% increase effective 1/1/02 on wages and EMT differential, rounded to the nearest dollar

2% increase 7/1/02 on wages and EMT differential based upon 12/31/01 wages and 12/31/01 EMT differential, rounded to the nearest dollar.

(2) and longevity increase of \$150 on 1/1/01 and \$150 on 1/1/02 only on the longevity payment for the "after 17 years of service."

(3) So that Article 4, Compensation Section 1. Annual Salaries will read as follows:

Fire Fighter:	Effective Date:			
	<u>1/1/01</u>	<u>7/1/01</u>	<u>1/1/02</u>	<u>7/1/02</u>
1st Yr. of Service	28,135	28,687	29,261	29,835
2nd Yr. of Service	35,079	35,767	36,482	37,197
3rd Yr. of Service	42,024	42,848	43,705	44,562
4th Yr. of Service	48,968	49,928	50,927	51,926
5th and following Yrs. of Service	55,912	57,008	58,148	59,288
Fire Lieutenant	67,091	68,407	69,775	71,143
Fire Captain	77,825	79,351	80,938	82,525

The parties agree that the Employer has the right to appoint probationary Fire Fighters either at the minimum salary or any higher amount above the minimum, and that, in either case, the salary will move to the next higher step after one year of service. All new employees for an academy class shall be hired at the same rate of pay. This clause shall not apply to lateral transfers.

All unit members employed on or before 1/1/98 who are below the maximum salary for their positions shall maintain their positions on the salary schedule by remaining the same number of steps from the maximum. For example, under the "old system" an employee

at step 2 was 2 step below the maximum, i.e., step 4. Under the "new system", the employee would be in step 3 at 2 steps below the maximum, i.e., step 5.

b. **Longevity:** An employee shall be entitled to a longevity payment above his annual base rate as follow:

<u>Longevity:</u>	<u>Effective Date</u>	
	<u>1/1/01</u>	<u>1/1/02</u>
After 5 yrs. of Service	700	700
After 10 yrs. of Service	900	900
After 15 yrs. of Service	1,100	1,100
After 17 yrs. of Service	1,950	2,100

Longevity payments shall be included as part of the employee's base salary and shall become effective on the payroll period following the employee's anniversary date.

c. **Emergency Medical Technician (EMT) Differential:** All members of the bargaining unit who possess the EMT certification: sanctioned by New York State and required by the Fire Commissioner and perform such EMT services as are required by the Fire Commissioner will be paid an annual EMT Differential of \$1020 effective 1/1/01, \$1,040 effective 7/1/01, \$1,061 effective 1/1/02 and \$1,082 effective 7/1/02. In the future, the EMT Differential shall be adjusted by the same percentage as base salary on the same effective date as base salary. The EMT Differential shall be included in annual salary, on a bi-weekly basis, for purposes of computing holiday, overtime pay, and any other compensation calculated using an hourly rate of pay and any pay due upon retirement or resignation.

Members who receive the differential available under this Article must participate in such training and receive NYS certification in all EMT programs which are sanctioned by NYS and which may become part of EMT certification as new technology and techniques become available and are required by the Fire Commissioner.

Training shall be at such times as are deemed appropriate by the Fire commissioner, however, no member of the unit shall lose the EMT differential provided for herein due to the Fire Commissioner's failure to schedule training necessary to achieve and/ or maintain EMT certification occur at times which are outside their regular tours of duty, members will be paid for such time at the rate of time and on-half (1-1/2) upon achieving EMT certification and/or decertification.

Members who satisfy the above conditions for a period of time less than the entire calendar year will receive a pro rata share of the differential.

City Proposal 13 on Health Insurance Retirees Coverage.

The expired Agreement contains Article 7 (HEALTH INSURANCE), Section 2 reads as follows:

2. Retirees Coverage: The EMPLOYER agrees to continue to pay the full cost of individual and dependent coverage for hospitalization, surgical and major medical insurance and all other benefits for all employees in the bargaining unit who have not reached the age of 65 years as well as those who are at the age of 65 years or over under the Statewide Option of the New York State Health Insurance Program on behalf of all employees in the bargaining unit who retire subsequent to January 1, 1972.

The City proposes in its Item 13:

Replace the existing language of Article 7, Section 2, Health Insurance Retirees Coverage, with the following provision:

"Retirees coverage. the Employer agrees to pay the following percentage cost of the State Empire Plan or comparable plan for Members who retire:

Individual coverage: 82%

Family coverage: 35%" "

The Union strongly opposes this proposal.

In support of its position, the City makes the following points:

1. "The skyrocketing costs of retiree health insurance and the trend in which the cost of retiree health insurance has grown at a faster pace than, and in fact surpassed, the cost of providing health insurance to its working employees during 2001 and 2002 (C. Ex 66.) Thus, since 1997 alone, the City's employees costs for providing health insurance to active employees has risen by 36.7%, a significant increase in costs. Meanwhile, the City's cost of providing health insurance to retirees increased by an astounding 61.6% since 1997. Its retiree health insurance costs have risen by \$600,000. The City must limit its retiree health insurance costs in order to remain fiscally viable, even before it can provide increases in pay and benefits to the Union." (Br. p 40)

2. "Currently, active firefighters and police officers hired after 1983 must contribute to their health insurance for individual and for dependent coverage. The City pays 82% of the Empire Plan rate, and the employee must contribute the remaining 18%." "Since firefighters can retire after 20 years of service, the first group of employees subject to the 18% contribution will be eligible for retirement in 2003. It is absurd for the City to pay more for health insurance coverage for retired employees than it pays for active employees."
3. "The City contends that retirees should contribute at least the same amount as active employees contribute. Moreover, this is the logical time for such a change since employees hired after 1983 will be eligible to retire in 2003."
4. In regard to the City's civilian employees hired after 1983, the City pays 82% of the retiree's individual coverage at Empire Plan rates and 35% of dependent coverage.
5. "The evidence shows that under a plan such as Health net, which is a comparable plan, even where the City pays the prevailing 82% of the individual coverage costs at Empire Plan rates, the employee or retiree will receive individual coverage at no cost because the Empire Plan rates exceed the Health net rates." (Br. p 41)

DISCUSSION ON HEALTH INSURANCE RETIREES COVERAGE

The Panel has reached the following conclusions in regard to health insurance retiree's coverage:

1. For employees in this c.b.u. appointed on and after January 1, 1983, the City pays the following towards health insurance coverage.
 - Individual & dependent coverage: - 82% of the premium for
individual + dependent coverage of the State
Empire Plan - Core + Enhancements
 - Individual coverage -82% of the premium for
individual coverage of the State
Empire Plan-- Core + Enhancements
2. Firefighters are eligible for retirement after 20 years of service so the first firefighters appointed after January 1, 1983 will start to be eligible for retirement in 2003, which raises an issue which is very important to the parties.
3. It is an anomaly that under the expired Agreement the maximum that the City pays for health insurance coverage of the employee appointed after January 1, 1983 is 82% of the appropriate premium, "individual" or "individual plus dependent," of "The State Empire Plan - Core + Enhancements" whereas upon

that employee's retirement, the City obligation is increased to 100%.

4. In regard to internal comparisons, it is clear from the facts presented by the City in hearing, that the City pays at most 82% of State Empire Plan - Core and Enhancements on behalf of individuals and 35% on behalf of dependents. Internal comparisons favor the City's position.

5. Tri-City comparisons with firefighters of Mt. Vernon and White Plains also tends to favor the City's proposal, but are not conclusive as to a common pattern.

Mt. Vernon has no explicit contractual obligation to pay towards health insurance of retirees, so State Law, is controlling. Neither party presented any testimony on Mt. Vernon's practice in this regard.

White Plains has a different formula for City contributions based upon years of City Service, as follows:

<u>Completed Years of City Service</u>	<u>City Contributions</u>
20 or more	100%
15 - 19	80%
10 - 15	50 % (individual) {35%} (family)
Less than 10	0%

6. The Panel concludes that the City's proposal is justified in regard to "individual" coverage on the basis that the City not pay more on behalf of the "individual" coverage of a retiree then it was obligated to pay for the active employee. In regard to "individual plus dependent" the Panel concludes that the City continue to contribute 82% of "the State Empire Plan-Core + Enhancements" for the retiree and family as it contributed before retirement.

Taking all the above facts and arguments into consideration for the issue of the City's Proposal 13 on Health Insurance Retiree's Coverage, the Panel AWARDS as follows:

For members first hired by the City on and after January 1, 1983, the City shall contribute 82% of the premium for individual plus dependent coverage of the State Empire Plan - Core + Enhancement or shall contribute 82% of the premium for individual coverage of the State Empire Plan - Core + Enhancements upon his or her retirement.

G. PROPOSALS DENIED IN FULL

The items listed below are denied. The Panel recognized the reality that the two-year term of this AWARD has almost expired and that the parties will be negotiating on some or all of these items, and on other items. In each instance, the Panel decided that, at this time, the evidence and reasons offered do not support the specific changes in the terms and conditions of employment proposed.

UFFA Proposals

- 2. EMT Differential
- 3. Work Week
- 4. Personal Leave
- 5. Sick Leave
- 6. Insurance

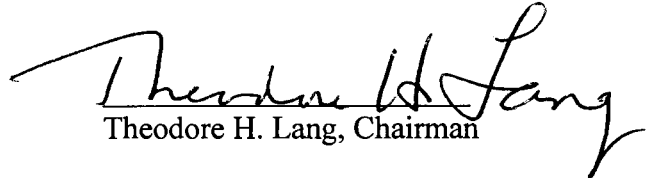
City Proposals

- | | |
|------------------------------------|--|
| 1. Payroll Deduction of Union Dues | 16. Probationary Appointments |
| 2. Union Meetings | 17. Uniform Cleaning |
| 3. Leaves for Union Conventions | 18. Personal Items Lost |
| 4. Union office | 19. Emergency Reporting Service |
| 5. Overtime | 20. Housing Inspection |
| 6. 40 Hour Work Week | 21. Mutual Leave |
| 7. Holiday, Time - Off Option | 22. Special L/A |
| 8. Personal Leave | 23. Manning |
| 9. Earning of S.L. | 24. Station Assignment UFFA President
and Secretary |
| 10. Sick Leave Notes | 25. Section 207a |
| 11. S/L Bonus | 26. UFFA Equipment Storage |
| 12. H. I. Plans | 27. Drug Testing |
| 14. Settlements of Disputes | 28. 2% Fire Ins. Premium etc. |
| 15. " " " | |

All terms and conditions of employment which are not amended in this AWARD shall remain unchanged during the two year period of this AWARD.

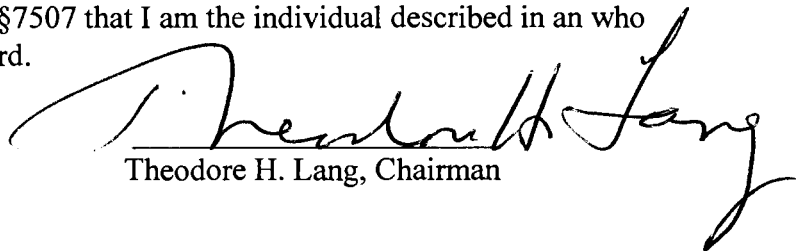
H. CONCLUDING REMARKS

The above AWARD completes the Panel's work pursuant to Article 14, 209.4 of the Civil Service Law.


Theodore H. Lang, Chairman

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

I hereby affirm pursuant to CPLR. §7507 that I am the individual described in an who executed this instrument which is my Award.


Theodore H. Lang, Chairman

I assent on the specific changes in wages and terms and conditions of employment Awarded except as follows (Add comments as desired)

Signed September 9, 2002 (Signature page attached)

Vincent Toomey, Esq., City Designee

I assent on the specific changes in wages and terms and conditions of employment Awarded except as follows (Add comments as desired)

Signed Dissent dated September 18, 2002 faxed to chairman (attached)

Richard S. Corenthal, Esq., UFFA Designee
Meyers, Suozzi, English & Klein, PC.

Richard Corenthal (212) 763-7022

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September 9, 2002

BY FEDERAL EXPRESS

Theodore H. Lang, Ph.D.
717 Ocean Avenue
Suite 414
West End, New Jersey 07740

Re: City of New Rochelle Fire Interest Arbitration

Dear Dr. Lang:

I have reviewed the draft of the interest arbitration award and am in agreement with its terms.

There is a typographical error on the salary schedule for the rank of Fire Lieutenant. I marked the change and executed the award on behalf of the City.

Please forward a final copy of the award when it is executed by you and Mr. Corenthal.

Thank you for your cooperation.

Very truly yours,

LAW OFFICE OF VINCENT TOOMEY


Vincent Toomey

VT/dw

cc: Richard Corenthal, Esq.
Matthew W. Iarocci

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

-----X
IN THE MATTER OF THE INTEREST
ARBITRATION BETWEEN

THE CITY OF NEW ROCHELLE

and

IA201-022
M201-064

UNIFORMED FIREFIGHTERS ASSOCIATION INC.,
LOCAL 273, IAFF,

-----X
DISSENT AND COMMENTS BY UNION PANEL REPRESENTATIVE

I strongly dissent from the Determination and Award. The public interest arbitration panel must apply the criteria set forth in Civil Service Law § 209.4. Furthermore, the public interest panel should not weigh and balance the criteria set forth in Civil Service Law §209.4 in a manner at odds with the values and standards which the parties themselves have established by their own actions at the bargaining table. As Arbitrator Dana Eischen recently stated in City of New York and PBA, PERB Case IA201-027, M201-146:

For arbitrators to reject such mutually accepted historical standards and impose their own value judgements divorced from the realities of the bargaining relationship would be a clear invitation to the parties to seek more in arbitration than they could obtain in negotiation with knowledgeable negotiators.

Such an award, if it were made, would make successful negotiations between the City and its labor organizations extremely difficult, by undermining a process of collective bargaining relationship which is time-proven to be effective in accommodating the needs of the parties with due regard for the interests and welfare of the public. Even if times and circumstances were otherwise normal, it would be unwise and imprudent for this Panel to impose such major sea changes on an established bargaining relationship by arbitral fiat.

City of New York and PBA, PERB Case IA201-027; M201-146.

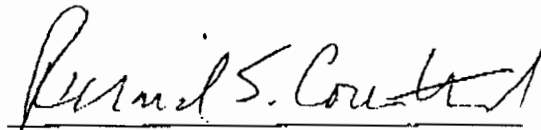
The majority's determination to require firefighters hired on and after January 1, 1983 to pay a portion of their retiree health insurance coverage where the existing and preceding contracts provide that the City pay the full cost of individual and dependent retiree health insurance coverage is an improper "reject[ion] [of] mutually accepted historical standards" and "impos[ition] [of] their own value judgements divorced from the realities of the bargaining relationship." The Award expressly states that the "Panel concludes that the City has the financial ability to pay for just and reasonable improvement in compensation and longevity payment to firefighters for the years 2001 and 2002..." Having found that the City has the ability to pay for salary, longevity and EMT pay increases, awarding a significant economic "give-back" to the City in the form of decreasing the cost of retiree health insurance coverage can be characterized as nothing more than "arbitrary and capricious" and a textbook example of arbitrators "throwing a bone" to one of the parties who chose them. Significantly, there is no pattern established by Mount Vernon and White Plains upon which to base the majority's decision regarding retiree health insurance contributions. The Determination states "Try-City comparisons with firefighters of Mount Vernon and White Plains also tends to favor the City's proposals, but are not conclusive as to a common pattern." I strongly disagree with the majority's findings with respect to the existence of the evidence which "tends to favor" the City's proposals with respect to retiree health insurance coverage. The City failed to present evidence with respect to the practice in Mount Vernon and White Plains has a different formula for City contributions. As stated in the majority's determination, "White Plains has a different formula for City contributions based upon years of City Service..." There is no evidence supporting the City's claim of an internal pattern. No uniformed employees (fire and police) in the City are currently required to contribute to the cost of retiree health insurance benefits. Currently, the City pays the full cost of retiree health insurance benefits for police officers and firefighters.

It appears that the majority's determination with respect to retiree health insurance coverage is based upon a finding that it is "an anomaly that under the expired Agreement the maximum that the City pays for health insurance coverage of the employee appointed after January 1, 1983 is 82% of the appropriate premium...whereas upon that employee's retirement, the City obligation is increased to 100%." Emphasis added. The majority's finding that it is an "anomaly" that firefighters who retire do not have to pay for health insurance coverage for themselves or their dependents while they were required to contribute to the cost of health insurance coverage as active employees is startling and underscores the irresponsibility of the majority's determination. First, firefighters retiring in 2003 will have worked long and hard for twenty years with the expectation that their health insurance coverage will be paid for by the City when they retire. The majority has arbitrarily taken away a significant benefit which has been earned by these firefighters. Second, there is nothing anomalous about firefighters contributing to the cost of health insurance when they are wage earners and not having to pay for health insurance coverage upon retirement when they are no longer wage earners. Third, the City, in previous collective bargaining contracts, agreed to pay the full cost of retiree health insurance coverage. There can be no "anomaly" when the City agreed to pay such benefits in the past. The majority's determination with respect to retiree health insurance coverage is arbitrary, capricious and not supported by the statutory criteria which the panel is bound to follow.

With respect to the salary increases, I dissent with respect to the deferred dates of the increases. The majority specifically finds that the "tri-city grouping in which New Rochelle falls justifies increases greater than the internal model of 3.5% per year." The City's firefighters are entitled to receive the full-benefit of two 4% increases during the two years of the contract covered by this Award. At a minimum, the staggered 2% increases should be fully compounded during the term of the agreement.

Finally, I am deeply distressed by the conduct of the City in this case. After the close of the record, without prior notice to the Union and without seeking the consent of the Neutral Chairperson, the City unilaterally sent prejudicial materials to the Neutral Chairperson regarding the City's fiscal condition relating to a time period after the close of the record. While the Neutral Chairperson declined to accept the material, the City should not have sent such prejudicial materials to the Chairperson in the first place. The Neutral Chairperson was required to review the materials in making a determination to reject them.

Dated: New York, New York
September 18, 2002


Richard S. Corenthal