

NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF THE ARBITRATION BETWEEN :

CITY OF BUFFALO : ARBITRATION PANEL'S
AWARD and OPINION

-and- :

BUFFALO PROFESSIONAL FIREFIGHTERS ASSOCIATION, :
LOCAL 282 :

CASE NO. IA86-26: M86-352

A PUBLIC ARBITRATION PANEL (hereinafter referred to as the "PANEL") comprised of Richard Planavsky City appointed Arbitrator, David Donnelly Union appointed Arbitrator, and Paul G. Kell Chairman was appointed by the NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD to render an Interest Arbitration Award on the issues at impasse between the CITY OF BUFFALO (hereinafter referred to as the "CITY") and the BUFFALO PROFESSIONAL FIREFIGHTERS ASSOCIATION, LOCAL 282, IAFF, AFL-CIO (hereinafter referred to as the "UNION"). Arbitration hearings were held in Buffalo, New York in May 1987. Both Parties submitted a post hearing brief. All the evidence having been presented, the arbitration hearing was accordingly closed.

The Panel met in executive session to evaluate the evidence, and to render an Interest Arbitration Award. The following encompasses the Panel's Interest Arbitration Award.

APPEARANCES: FOR THE CITY:

JANICE HUPKOWICZ, Director of Labor Relations

FOR THE UNION:

EDWARD J. FENNELL, Union Advocate

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IN GENERAL:

(A) The dispute involves the continued impasse for a successor Labor Agreement, to an Agreement which expired on June 30, 1986. On January 26, 1987 the New York State Public Employment Relations Board designated the "Panel" in accordance with Section 209.4 of the New York State Civil Service Law, for the purpose of "making a just and reasonable determination" of the dispute. Prior to the arbitration hearings, the Parties submitted a pre-hearing brief containing the issues at impasse and their positions related thereto. Arbitration hearings were held on May 4, 1987, May 5, 1987, and May 6, 1987 in Buffalo, New York. At said hearings the parties were afforded a full opportunity to present evidence, testimony and exhibits both in support of their positions and in opposition to issues submitted by the opposing Party.

(B) In evaluating economic proposals, the Panel, in addition to other criteria, has given weight to the CPI, the position of the Union in relation to other City units; the salary adjustments granted other City units; the position of the Union in relation to other comparable firefighting units; the ability of the City to pay; and the total cost of the Panel's Award.

(C) In evaluating requests for non-economic issues, the Panel has considered, in addition to other criteria, the circumstances which arose during the contract term which necessitate and/or suggest the proposed changes; as well as the effect of said changes.

(D) The initial proposals submitted by the Parties were the following:

Issue #1	Salary (Union and City proposal)
Issue #2	Lunch Money (Union proposal)
Issue #3	Increments (Union and City proposal)
Issue #4	Longevity (Union proposal)
Issue #5	Dental Insurance (Union and City proposal)

Issue #6	Optical Insurance (Union proposal)
Issue #7	Automobile Allowance (Union proposal)
Issue #8	Employee Assistance Program (Union proposal)
Issue #9	Salary Upgrade (Union proposal)
Issue #10	Leave - Sick and Injury (Union proposal)
Issue #11	Sick Leave Bank (Union proposal)
Issue #12	Personal Leave (Union and City proposal)
Issue #13	Direct Deposit (Union proposal)
Issue #14	Double Coverage (City proposal)
Issue #15	Medical (City proposal)
Issue #16	Holiday (City proposal)
Issue #17	Seniority (City proposal)
Issue #18	Printing of Agreement (City proposal)

During the interest arbitration hearing the Parties indicated that Issue #8 (Employee Assistance Program) is currently the subject of a scope of negotiations petition before PERB; and the Parties stipulated the following:

EAP: If this proposal is ruled to be a mandatory subject of negotiation, the Parties agree to negotiate in good faith. If the Parties fail to reach agreement, the Parties shall submit their respective position on the matter to the Arbitrator and shall have the opportunity to respond to the other Party's position. The Arbitration Panel shall then discuss and consider the issue and render an award.

(E) The Parties also indicated that Issue #11 (Sick Leave Bank) was the subject of a scope of negotiations petition before PERB; and the Parties stipulated the following, which includes Issue No. 10 (Leave - Sick and Injury)

The Sick Leave Bank, if ruled to be a mandatory subject of bargaining shall be discussed in conjunction with the issue of sick leave entitlement and both shall be negotiated by the Parties upon the conclusion of the current firefighter and police arbitrations. Should the Parties fail to reach agreement either or both of these issues may be submitted by the Parties to mediation, and subsequently, interest arbitration.

The Parties further agree that if these issues are presented to an Arbitration Panel, the Panel shall take into consideration the total cost and impact of the PBA interest arbitration award for the period commencing July 1, 1986.

It is understood by the Parties that if the sick leave bank or employee assistance program is found to be non-mandatory subjects there shall be no further negotiations as to the issue found non-mandatory such as it affects the Collective Bargaining Agreement during the period July 1, 1986 - June 30, 1988.

(F) The Parties also withdrew, in whole or in part, the following Issues from Arbitration:

Issue #5	Dental Insurance
Issue #6	Optical Insurance
Issue #7	Automobile Allowance
Issue #13	Direct Deposit
Issue #15	Medical
Issue #17	Seniority

The remaining Issues before the Panel are the following:

Issue #1	Salary (including upgrading)
Issue #2	Lunch Money
Issue #3	Increments (Firemen and Superior Officers)
Issue #4	Longevity
Issue #5	Dental and Medical Insurance
Issue #9	Upgrading of Positions
Issue #12	Personal Leave
Issue #14	Double Coverage
Issue #16	Holiday
Issue #18	Printing of the Agreement

(G) The statutory criteria contained in Section 209.4 of the Civil Service Law reads as follows:

(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 the wages, hours, and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities;
- b. the interests and welfare of the public and the financial ability of the public employer to pay;
- c. comparison of peculiarities in regard to other trades or professions, including specifically, (1) hazards of employment; (2) physical qualifications; (3) educational qualifications; (4) mental qualifications; (5) job training and skills;
- d. the terms of collective agreements negotiated between the parties in the past providing for compensation and fringe benefits, including, but not limited to, the provisions for salary, insurance and retirement benefits, medical and hospitalization benefits, paid time off and job security.

(II) After receipt of the post hearing briefs and after an evaluation of same, after an evaluation of the testimony and evidence presented at the arbitration hearings, and after evaluation of the post hearing briefs, the Panel met in executive session. After a careful review of same, the following encompasses the Panel's Interest Arbitration Award:

(I) At the outset the Panel recommends the Parties read and evaluate the Interest Arbitration Award in its entirety; while each individual issue was considered on its merits, they are nevertheless entwined and woven to form the total fabric of the Panel's Award.

PARTIES' PROPOSALS:

ISSUE NO. 1: SALARY:

Fire Proposal:

- A. Increase
 - 1. July 1, 1986: 8% or minimum of \$2,125
 - 2. July 1, 1987: 8% or minimum of \$2,295
- B. Upgrading of Firefighter
 - 1. July 1, 1986: \$500.00 to base salary
 - 2. July 1, 1987: \$500.00 to base salary
- C. Appendix "A"
 - 1. Rejection of Steps (starting plus 4) for Lieutenant, Fire Captain, Battalion Chief and Division Fire Chief
 - 2. Anniversary date:
 - a. Date of appointment to present position
 - 1. Rejection of City Proposal for change to anniversary date
 - b. Date adjusted by leave or suspension
 - 1. Rejection of City Proposal concerning leave or suspension without pay

3. 8% salary increase for
 - a. Lieutenant
 - b. Fire Captain
 - c. Battalion Chief
 - d. Division Fire Chief

City Proposal:

- A. Salary increase
 1. July 1, 1986: 4%
 2. July 1, 1987: 5%
- B. Upgrade for Firefighter
 1. July 1, 1986: \$100.00
 2. July 1, 1987: \$100.00
- C. Appendix "A"
 1. Steps for Lieutenant, Fire Captain, Battalion Chief and Division Fire Chief
 - a. Starting salary plus 4 increment steps
 2. Steps obtained on anniversary date of appointment to present position
 - a. Date adjusted by leave of absence or suspension without pay
 3. Salary

	Step 1	Step 2	Step 3	Step 4	Step 5
Lieutenant	\$23,520	\$24,282	\$25,043	\$25,805	\$26,567
Fire Captain	\$26,826	\$27,086	\$27,345	\$27,605	\$27,864
Battalion Chief	\$28,379	\$28,893	\$29,408	\$29,922	\$30,437
Division Fire Chief	\$31,048	\$31,659	\$32,270	\$32,881	\$33,492

ISSUE NO. 2: LUNCH MONEY:

Fire Proposal:

- A. July 1, 1986: 40 minutes at time and one half (cash equivalent of 60 minutes) for each day his/her platoon is scheduled to work

City Proposal:

- A. No change in current payment of 40 minutes at straight time for each day worked

ISSUE NO. 3: INCREMENTS:

Fire Proposal:

- A. Change 4 increment steps to 2 increment steps
- B. Change 4 years to 2 years

City Proposal:

- A. No change in number of increments
- B. No change in number of years

ISSUE NO. 4: LONGEVITY:

Fire Proposal:

- A. After 5 years of service, \$300.00 annually
- B. An additional \$50.00 for each additional year

City Proposal:

- A. No change in current longevity provision
 - 1. If longevity increase, cost is deducted from general salary increase

ISSUE NO. 5: DENTAL AND MEDICAL INSURANCE:

City Proposal:

- A. Employee contributions
 - 1. Deduction from bi-weekly paycheck of \$5.00 as employee's contribution for dental insurance; and deduction from bi-weekly paycheck of \$25.00 for family coverage and \$10.00 for single coverage, as employee's contribution for medical insurance

Fire Proposal:

- A. Employee contributions
 - 1. Rejection of City's Proposal for employee contributions for Dental and Medical Insurance

ISSUE NO. 9: SALARY UPGRADE:

Fire Proposal:

- A. Upgrade Assistant Fire Alarm Dispatcher
 - 1. to salary of Fire Alarm Dispatcher.
- B. Upgrade Fire Alarm Dispatcher
 - 1. to salary of Captain

City Proposal:

- A. Current grades to be maintained

ISSUE NO. 12: PERSONAL LEAVE:

City Proposal:

- A. A member requesting personal leave shall give at least twenty-four hours notice in writing to his superior
- B. Emergency personal leave; a member requiring an emergency personal leave must notify the Fire Commissioner prior to the start of his shift. The Fire Commissioner may determine the cause of the emergency as unacceptable for use of personal leave, and the member will be required to report to duty as scheduled

Fire Proposal:

- A. Rejection of City Proposal of twenty-four hour notice and emergency personal leave

ISSUE NO. 14: DOUBLE COVERAGE:

City Proposal:

- A. City will not provide dental insurance coverage and/or medical and hospitalization insurance coverage, for any employee or retiree whose spouse has comparable or superior coverage
 - 1. As a result of employment in, or retirement from, City service as defined in Article 1.5

Fire Proposal:

- A. Rejection of City Proposal relating to double coverage

ISSUE NO. 16: HOLIDAY:

City Proposal:

- A. Combine Washington's birthday and Lincoln's birthday into a single Presidents' Day, celebrated on Washington's birthday
- B. Add Martin Luther King as the twelfth holiday, celebrated on third Monday in January

Fire Proposal:

- A. Rejection of a combined Presidents' Day, with a substitution thereof of Martin Luther King Day

ISSUE NO. 18: PRINTING OF AGREEMENT:

City Proposal:

- A. Cost of printing to be distributed as follows:
 - 1. 80% by Union, 20% by City.

Fire Proposal:

- A. Rejection of City Proposal with retention of current provision

PARTIES' POSITION

ISSUE NO. 1: SALARY

The Union supports its position for the "\$500 upgrading" in both 1986 and 1987 and for its salary proposal of "8% or a minimum of \$2,125 in 1986 and 8% or a minimum of \$2,295 in 1987", along the following lines: that the \$500 upgrading in both 1986 and 1987 is necessary for part of "parity" between the Police and Firefighters; that the "intent of the Common Council" was "parity" between Police and Firefighters; that considering "pay, longevity, night differential, report time and lunch time", there is a difference of \$1,468 between Police and Firefighters; that the \$500 upgrading is consistent with the Common Council's policy of "pay parity for public safety employees", and therefore should be awarded.

The Union supports its position for its proposed 1986 and 1987 salary increase along the following lines: that comparisons should be with Fire units in Albany, Rochester, Syracuse and Yonkers; that when comparing the Firefighters with said comparable cities, the Union proposal still places Buffalo at "92% of the average" of said comparable cities; and even if said comparable cities received a 5% increase, Buffalo would still be at "98%" of the average of said cities.

The Union also argues the City has the "ability to pay" the salary increase proposed by the Firemen; that the City received "substantial State aid", and there is nothing in the evidence said State aid will be reduced; that the tax rate has decreased, and there is a "budget surplus"; that there is significant saving to the City resulting from the decrease in "pension cost", and same supports a finding the City's fiscal position has "improved". The Union also notes that in light of the differences in job duties, the Union should not be limited to the salary adjustment granted other City units.

The Union reinforces its position that the City has the "ability to pay" the Union's proposed salary adjustment, by noting the following: that the City has "26.9 million" of "taxing ability remaining"; that the current City tax rate of "\$40.75" is "\$11.75 lower than in 1983"; that the City's overall tax rate is "lowest of all twelve of the largest cities in New York State"; that up and through June 30, 1986, the City experienced "eleven consecutive years of surplus", and in 1986-1987 there was a "5.1 million surplus" in one single budget line item; that while between 1975 and 1984 the "average increase for Firefighters was 95.4%", while Buffalo Firefighters increases was "third from the last" averaging "37.9%"; and that Buffalo does not compare favorably with other comparable

State firefighting units; that the current work load is "higher than other comparable units", and that since 1973 there has been a "reduction" in the number of Firefighters. The Union also argues the City will "not lose State aid", which State aid will be lost "when it no longer needs it"; that members of the City Council indicated "there is willingness and ability to pay", and accordingly the Union's salary proposal should be awarded.

The City supports its position for limiting the "upgrading" to "\$100 in each year of the Agreement" and for its salary proposal of "4% in the first year and 5% in the second year" by arguing that other City units settled for the "4% and 5%". The City supports its position for its "limited ability to pay" by arguing there is a "population decline", by noting the "families below the poverty level", and by arguing a "shift from higher paying to lower paying jobs"; that said factors are "indicators of distress"; and that when considering same, the Union has a "very strong position" relating to others within the labor market.

The City also argues the construction activity is "less than one-half of one percent of full value base", representing an "insignificant increase in real property tax base"; that the 1986-1987 budget contains a "4% increase" for both "salaries and fringes", that the 1987-1988 proposed budget provides for a "5% increase", with approximately "\$500,000 for fringes"; and that the above figures represent the "only funding available for settlement". The City emphasizes the "stagnant revenue growth and complete elimination of Federal aid"; that revenue growth computes to "1.8% per year", and State aid involves a "minimal growth of 11.4% since 1981-1982; that State aid is "not committed" to the level budgeted for either 1986-1987 or 1987-1988, with "difficulty" if State aid is reduced;

that the property tax component is "substantially less" than the State aid component; that State aid is "vulnerable", and is not "automatic"; and if State aid "will continue at the same level", it equates to "all terms and conditions to be carried forward".

The City also argues the potential liability of the HUD decision is "fifty-eight million dollars", with six million dollars reserved; that there is also an impact of "additional appropriations" to the Board of Education, ordered by Federal District Court; that the above may require an adjustment of the "already high tax rate" for one of the lowest tax bases in the State. The City also argues a decrease in State aid of "1%" requires a "3% tax increase"; and that a "3% State aid decrease" would cause the City to reach its "property tax limit"; that the overall tax rate was reduced because the City was "nearing the constitutional tax limit". The City also argues the pension cost saving is a "one time occurrence", and may not be relied upon in the future; and that surpluses were used in the "following year", and absent use of the surplus requires "raised revenues".

The City also argues the 1986 CPI increase for all Cities was "1.54%", while the Buffalo CPI for the same period was "0.51%"; that accordingly the Buffalo CPI was "one third of the national average"; that since there is "less inflation in Buffalo", wage settlement should "parallel" same; that to provide a "1% overall increase to all City employees", would require a "3.5% increase in property taxes"; and that relative to other workers in the United States and in the Buffalo area, the Union has "done very well" and has improved its position.

The City therefore argues that in light of the "oldest housing, poorest people, oldest people, the most females aged 19 and under

who are on AFCD and not married and have children, the household income, and the per capita income", there is a "limited ability to pay"; and that "dependency" of substantial outside aid is a "constraint" upon wages and benefits for all City workers; and that in light of same and in light of the CPI, the City's proposal has merit and should be awarded.

ISSUE NO. 2: LUNCH MONEY

The Union proposes an increase in lunch money from 40 minutes at straight time to "40 minutes at overtime", or an equivalent of 60 minutes of straight time, and supports its position along the following lines: that said increase would reduce the difference between Police and Fire to "\$758", and therefore represents a "partial implementation" of the "Common Council's intent to pay equity" between Police and Fire. The Union notes Police are "not required" to be present for all of the 40 minutes reporting time, for which they receive overtime; and in light of same, the Union proposal should be awarded.

The City argues against any increase in lunch money for Firefighters by noting the reporting time for Police is "beyond the day", while lunch money for Firefighters is "within the day"; that accordingly a comparison is "unrelated and inappropriate"; that one must consider the contract "in its entirety", and not on individual provisions; and that accordingly the Union proposal should be denied.

ISSUE NO. 3: INCREMENTS

The Union proposes a reduction of Steps for Firemen from 4 to 2; the City proposes retention of the number of Steps for Firemen, and inclusion of "starting Step plus 4" for Superior Officers. The Union argues that there previously were 2 Steps, and the schedule should revert to 2 Steps so all Officers have the same number of Steps.

The City argues the increase in Steps was in exchange for a "benefit" received by the Union, and the Union should not obtain a return at "no cost"; that all new City employees are on a 5 Step schedule; that a comparison with other cities indicates the present number of Steps for Firemen is comparable; and that the Union proposal would result in a "future cost to the City of \$300,000 for each new fifty Firemen hired".

The City on the other hand argues for a salary schedule for "Lieutenant, Fire Captain, Battalion Chief and Division Fire Chief" of "starting salary plus 4 Steps", with all appointments at "Step 1", with incremental Steps on "anniversary date of the appointment to the present position,; and with the date "adjusted by leaves of absence or suspensions without pay". The City notes this proposal would "not affect those currently holding the above positions", but would only apply to "newly appointed Officers" in the above cited ranks; that having a salary schedule with "more than one Step" allows "increases with experience in the position"; and that a comparison with other Fire units indicates that "50%" have more than one Step. The Union opposes any change in the number of Steps for Superior Officers, by arguing the City presented no valid rationale for same; and that the City proposal is in opposition to the Union proposal to reduce Steps.

ISSUE NO. 4: LONGEVITY

The Union supports its position for its proposed increase in longevity by arguing longevity is a "critical component in compensation", and the proposed increase in longevity is to achieve "pay equity" with other cities; that the Union is "below the average" of other cities, and the City granted Local 650 and 264 longevity which is "more than double" that of the Union; and that accordingly its proposed longevity increase should be granted.

The City argues against an increase in longevity by noting the Union has longevity "identical" to that of Police; that the cost of the increased longevity for Local 650 and 264 was "deducted from the salary". The City also notes that "50%" of units in other cities "receive less longevity" or "no longevity at all"; that the Union proposed longevity schedule "exceeds" that provided to other cities; that the increased cost of the Union proposal is \$571,450, equivalent to a 2.6% increase; and that said amount is not within the City's ability to pay, and therefore should be denied.

ISSUE NO. 5: DENTAL & MEDICAL INSURANCE

The City proposes that each employee pay "\$5.00 per bi-weekly payroll check" for dental insurance; that each employee with family coverage pay "\$25.00 per bi-weekly payroll check" for medical insurance, and those with single coverage pay "\$10.00 per bi-weekly payroll check" for medical insurance, and supports its position by noting that one year medical cost is \$1,514,721, equivalent to 6.85%; that the City currently pays the "entire premium", and a retired Officer receives "lifetime medical insurance" at a cost to the City of \$706,872 or 3.2%; that if there are fifty new retirees each year, the additional cost is \$77,993. The City notes the annual premium for each employee for dental is "\$224.52", for a total annual cost of "\$211,722, or 0.96%".

The City argues that employees in comparable cities "contribute toward their medical insurance", and medical insurance for retirees is "not available" in 75% of said cities; that "50%" of the cities do not provide dental insurance, and "27%" require employee contributions. The City notes its concern about the "ever increasing health care costs"; that the average increase in health care was "25% over the last three years", with the last increase in October 1986, of 9.94%; and that "five months later" there was a request for an additional 20.6% increase.

The City notes the 1977 Blue Cross/Blue Shield premium for family coverage was \$885.72; that in March 1982 it was \$1,315.41, and in March of 1986 it was \$1,702.32; that the City "cannot continue" to provide said coverage at the high premium, while absorbing increased costs; that since the Union enjoys more benefits than others, cost sharing should exist; and that cost sharing would allow the City to curtail the increased cost, while continuing to provide benefits.

The Union argues against any cost sharing and notes it is a "curtailment" of an existing benefit; that since the Union does not compare favorably in salary with other Fire units, and since the City request is a significant change in the terms and conditions of employment, the request for co-payment of dental and medical should be denied.

ISSUE NO. 9: UPGRADING OF FIRE ALARM DISPATCHER AND ASSISTANT
FIRE ALARM DISPATCHER

In support of its position for the upgrading of the Assistant Fire Alarm Dispatcher to the salary of Fire Alarm Dispatcher, and the upgrading of the Fire Alarm Dispatcher to the salary of Captain, the Union argues the "burden" of dispatching in "emergency situations"

is "enormous"; that the amount of work and the new computer requirement mandates upgrading the Dispatcher; that the unit receives as many as "325 calls every 24 hours", or an average of "14 per hour"; that the position is "difficult and stressful", and upgrading is warranted.

The City argues against upgrading by disputing the Union position that the "decision making responsibilities" of the Assistant Fire Alarm Dispatcher and Fire Alarm Dispatcher are equivalent to Lieutenant and Captain; that the compensation of both positions "compares favorably" with similar positions elsewhere; that there is "no difficulty" in recruiting for the position of Assistant Dispatcher, and rejection for said position or return to Fire-fighter is "not related to money". The City therefore argues the Union proposal should be denied.

ISSUE NO. 12: PERSONAL LEAVE

The City supports the position for a provision by which an employee requesting personal leave shall give "at least twenty-four hours notice" to the Deputy Commissioner, and that "emergency personal leave" may be rejected by the Deputy Commissioner if he finds the reason as "unacceptable", by arguing the intent is to "change the individual" to whom reason is given, for an emergency leave; that accordingly its proposal should be adopted. The Union opposes any change in personal leave, by noting the City proposal does not require the City to give a reason for the denial of personal leave; and therefore the City proposal should be denied.

ISSUE NO. 14: DOUBLE COVERAGE

The City supports its proposal for elimination of "double coverage" by noting that medical and dental insurance have an "annual cost of \$2,000 per employee"; that an employee or retiree, whose spouse is also employed by the City, receives hospitalization; that since the employee is covered by the employee's spouse, there is "no justification" for a "second policy"; that accordingly double coverage should be eliminated. The City also notes its proposed language is also contained in agreements with other City employees. The Union opposes any change in the current provision, arguing same is a delineation of an existing benefit.

ISSUE NO. 16: HOLIDAY

The City supports its position for a consolidation of Lincoln and Washington birthdays as a "Presidents' Day" and the addition of Martin Luther King's birthday as an additional holiday, by arguing this would grant Martin Luther King Day without additional expense of an additional holiday; and that other City units have agreement with said provision.

The Union opposes any change in the current contract provision by arguing no demonstrated need.

ISSUE NO. 18: PRINTING OF AGREEMENT

The City supports its position for an "80%/20%" cost of printing of the Agreement by arguing that said proposal is contained in the Agreement with other units; and that granting same would reflect the "distribution" of printed Agreements; that accordingly its proposal should be awarded. The Union opposes any change in the current provision, by arguing no demonstrated need for said change.

DISCUSSION

ISSUE NO. 1: SALARY

The issue of Salary involves the two areas of "increase in salary" and "upgrading"; with salary related to comparison of other units, and with upgrading related to comparison of Buffalo Police. On the issue of salary, the Union argues comparison with Buffalo Police and comparison with other Fire units; the City argues comparison of salary increase granted other City employees. In addition the City argues its "limited ability to pay", based upon the cited factors; the Union argues the City "has the ability to pay" its proposed salary increase, based upon "improvement" in the City's fiscal position.

The Panel notes the statutory criteria requires comparison of employees "performing similar services or requiring similar skills", comparison of "employment in comparable communities", and comparison of "hazards of employment, physical qualifications, educational qualifications, mental qualifications, job training and skills". A comparison of Buffalo Police versus Buffalo Fire and a comparison of Buffalo Fire versus other Fire units involves different considerations and could result in different findings. In addition the Buffalo Police are currently in Interest Arbitration, and this Panel has no jurisdiction over the results of the Police Interest Arbitration Award; and even if this Panel found comparison of Buffalo Police versus Buffalo Fire as the basis for the Interest Arbitration Award, said comparison could be voided by the Police Interest Arbitration Award. The Panel finds more relevant, a comparison of Buffalo Fire versus other Fire units in comparable communities; and this finding is supported by the fact that the evidence does not contain a job evaluation comparing Buffalo Fire versus Buffalo Police, upon which this Panel could make a valid determination.

While the City Council may apply the standard of comparability between Buffalo Police and Buffalo Fire and therefore compensate both units on an equal basis, this Panel is required to consider the statutory criteria; and after considering all of the factors under the statutory criteria, the Panel finds more relevant a comparison of Buffalo versus other fire units in comparable communities.

The Panel also notes there is nothing in the evidence limiting the Panel's award to salary adjustments granted non-safety units; said non-safety units are not covered by the Interest Arbitration Law, while Police and Fire are covered by same; and while consideration was given to salary adjustments granted other Buffalo employees, the Panel is not limited to said increases. The Panel also notes the statutory criteria requires consideration of "the interest and welfare of the public and the financial ability of the public employer to pay"; and consideration must also be given to differences between the financial ability of Buffalo and the financial ability of the other communities.

At the outset the Panel notes the City proposal includes an "upgrading of \$100" in each of the two years of the Agreement; same is a recognition by the City that an additional salary adjustment is warranted. The difference between the Parties involves the amount of additional salary adjustment; and while the Panel will include in its award the City proposal of the "\$100 upgrading" in each of the two years of the agreement, it has considered said amount in its evaluation of the salary increase.

The Panel has considered the salary increase, together with the improvements awarded on other economic issues, as well as the cost of said issues, the effect upon comparison with other communities, and the City's ability to pay. The Panel notes the prior

Agreement expired on June 30, 1986. The Panel is of the opinion that stable labor relations would best be served by an Agreement of more than two years. However since both Parties limited their proposal to a two year Agreement, and since under the statute and absent agreement between the Parties, the Panel may not exceed two years, the Panel is bound by the Parties' proposals and by the statute. Accordingly the length of the Agreement should be from July 1, 1986 through June 30, 1988.

The Panel has analyzed the financial data submitted by both the City and the Union. After said analysis, the Panel finds the salary increase and the other economic improvements contained in the award, are within the City's ability to pay. The evidence requires a finding the financial position of the City has improved; and while said improvement is insufficient to grant total comparison with other Fire units in comparable communities, the Panel's salary award, together with lunch money and longevity, narrows the difference with other fire units in comparable communities, grants equity to the Parties, and is within the City's ability to pay.

After a careful analysis the Panel awards the following:

- a) Retroactive to July 1, 1986, a 4% increase across the board for all Steps and Ranks; plus an additional \$100 upgrading for Firefighter
- b) Retroactive to January 1, 1987, a 1% increase across the board for all Steps and Ranks
- c) Retroactive to July 1, 1987, a 5% increase across the board for all Steps and Ranks; plus an additional \$100 upgrading for Firefighter
- d) Effective January 1, 1988, a 1% increase across the board for all Steps and Ranks

The question of a "starting salary plus four incremental steps" for Lieutenant, Fire Captain, Battalion Chief and Division Fire Chief; the question of obtaining "Steps on the anniversary date of appointment to the present position"; and the question of the "date adjusted by leave of absence or suspension without pay", will be addressed by the Panel under Issue No. 3 (Increments).

ISSUE NO. 2: LUNCH MONEY

Neither party proposes the elimination of lunch money, and the Union proposes an increase from the current "40 minutes at straight time" to "40 minutes at overtime", for "60 minutes of straight time". The City argues there is a "difference" between the payment of "reporting time" for Police and "lunch money" for Fire; that the payment of lunch money to Fire is "during the working day", while reporting pay to Police is "beyond the working day". Note is taken the Police Agreement requires an Officer to be present for "15 minutes prior to the commencement of a tour of duty", but does not require Police to remain for "25 minutes after the shift except in those circumstances when it is necessary for an employee to complete a task begun in the course of regular duty hours"; and that portion of the 40 minutes represented by the 25 minutes after the shift is different than the 15 minutes before the shift, and therefore merit for an increase in lunch money.

While there is merit that time beyond the shift is at "overtime", and therefore both the 15 minutes before and 25 minutes beyond the shift for Police is at overtime, there is also merit that time within the shift is at straight time. Accordingly there is no merit that lunch money, which is during the working day, should be at overtime; it should continue to be at straight time. The Panel finds lunch money should be increased from 40 minutes at straight time to 60 minutes at straight time, said payment to include injury on duty; which injury on duty is determined by the Commissioner, subject to grievance and arbitration.

ISSUE NO. 3: INCREMENTS FOR FIREMEN AND SUPERIOR OFFICERS

The issue of increments involves the request by the Union for a reduction in the number of increments and also involves the request by the City for a "starting salary plus four increment steps"

for Lieutenant, Fire Captain, Battalion Chief and Division Fire Chief; and in addition the request by the City that steps be obtained "on the anniversary date of appointment to the present position", and the request by the City the date be "adjusted by a leave of absence or suspension without pay".

The evidence shows that the "starting salary plus four steps" for Firemen involves those hired after April 1, 1981, and the City proposal for a starting "salary plus four increment steps involves prospective Superior Officers". A review of the evidence requires a finding the Union has not presented substantial evidence that the current incremental steps for Fire are out of line with other Fire units; accordingly there is no current basis to award same. The Panel also notes Superior Officers are promoted through the ranks, and are therefore deemed qualified at the time of promotion; and the City has the opportunity to evaluate prior to promotion. In addition the City has not presented substantial evidence that increasing the number of Steps for Superior Officers will measurably improve the Fire Department. Accordingly there is no current basis to award same.

In connection with the City request that Steps be obtained on the anniversary date of appointment to the present position, the Panel notes the anniversary date may have application beyond increments; and since the Panel has not awarded Steps for Superior Officers, the anniversary date request should also be denied. In connection with the City request to adjust the date by leave of absence or suspension without pay, note is taken that leaves of absence are within the control of the City; and whether the anniversary date should be adjusted due to a "suspension without pay" is a matter which falls within the disciplinary process. Accordingly the Panel does not find merit to either the City or Fire proposals and therefore neither is awarded.

ISSUE NO. 4: LONGEVITY

The Union proposes an increase in longevity; the City does not oppose a longevity increase, provided money resulting therefrom is deducted from the salary proposal. The evidence requires a finding longevity should be improved, based upon a comparison with other comparable units; and also noting that improvements in longevity were granted other City employees in addition to the City's salary proposal. The Panel finds that retroactive to July 1, 1986, longevity should be increased to \$200, \$400, \$600, \$800 and \$1200; that retroactive to July 1, 1987, longevity should be increased to \$200, \$450, \$700, \$950, and \$1200; with said amounts to be paid under the existing yearly schedule.

ISSUE NO. 5 AND ISSUE NO. 15: DENTAL AND MEDICAL INSURANCE

The City proposes that each Fireman contribute "\$5.00 per bi-weekly paycheck" for dental; and each employee with family coverage pay "\$25.00 per bi-weekly payroll check" for medical insurance, and those with single coverage pay "\$10.00 per bi-weekly payroll check" for medical insurance. Dental would therefore amount to approximately \$130.00 per year and family medical would be approximately \$650.00 per year. The Union opposes any contribution, arguing it constitutes a "significant decrease" in total compensation.

The City proposal for dental and medical contributions computes to \$780 per year, which equates to 3.43% of the existing top Firefighter salary; it therefore involves a significant decrease in compensation which almost eliminates the City's first year salary proposal, and would further diminish the standing of the unit when compared with other comparable units. The Panel also notes the proposed "\$650 family medical contribution" exceeds the amount paid by the City for increases in Blue Shield/Blue Cross in the four year

period between March 1982 and March 1986. The Panel also notes a saving to the City resulting from the Panel's Award on Issue No. 14 (Double Coverage). In light of a comparison of the unit's salary with other comparable units, and when noting the above, the Panel does not find merit to the City proposal for dental and medical insurance contributions. Therefore said proposal is denied.

ISSUE NO. 9: UPGRADE OF POSITIONS

The Fire proposes upgrading of Assistant Fire Alarm Dispatcher to the salary of Fire Alarm Dispatcher, and upgrading Fire Alarm Dispatcher to the salary of Captain; it supports its position based upon the "workload" and "additional computer knowledge". The City argues salaries are "comparable", and there is "no difficulty obtaining and retaining Officers in said two positions". The Panel notes that based on the salary of the expired Agreement, the Union proposal is \$1,966 for Assistant Fire Alarm Dispatcher and \$1,297 for Fire Alarm Dispatcher.

The Panel finds merit that both positions require additional compensation. There is however no evidence that said positions should be ranked as proposed by the Union; rather, based upon the additional duties and responsibilities, the Assistant Fire Alarm Dispatcher should receive a yearly stipend of \$500, and the Fire Alarm Dispatcher should receive a stipend of \$750.

ISSUE NO. 12: PERSONAL LEAVE

The City proposes "24 hour notice" for personal leave, and the right to deny emergency leave. The Union proposes rejection of the City's proposal related thereto, arguing there are "no listed criteria" related to the right to deny. The City also argues the difference between the current provision and its proposal is the change from "his Superior" to "Fire Commissioner" for emergency

leave, arguing it would provide "continuity". The Panel finds the City proposal has merit, provided the language would be the "Fire Commissioner or his designee"; and also provided that a reason is given where an emergency leave is denied, which denial should not be unreasonable.

ISSUE NO. 14: DOUBLE COVERAGE

The City proposes that as a result of employment in or retirement from City service, as defined in Article 1.5, providing "medical, dental, or hospitalization" for an employee or retiree whose "spouse has comparable or superior coverage", is a cost to the employer for which the employee receives no benefits; and the City therefore argues that elimination of double coverage does "not deprive" employees of said benefit.

The Panel finds merit to the City position for the elimination of double coverage. The Panel however notes a City employee, whose spouse is not employed by the City, but who has medical insurance, is paid \$480 in lieu of medical coverage; yet the City has not proposed payment in lieu of double coverage where both employees are City employees; if there is merit to compensate employees whose spouses are not City employees, there is also merit to compensate employees where both are City employees. The Panel also finds that an employee whose status changes so that the spouse no longer has comparable or superior benefits, should be permitted to return to coverage under the then existing plans.

The Panel notes the City testified the cost of hospitalization for family dental is \$2,000. A portion of the saving resulting from the elimination of double coverage should be shared by the employee. Therefore the Panel finds that where double coverage is eliminated, said employee should receive, in lieu thereof, an amount of \$600, payable on December 31st of any given year.

ISSUE NO. 16: HOLIDAY

The City proposes to combine Washington's and Lincoln's birthday to a single Presidents' Day to be celebrated on Washington's birthday; and to add Martin Luther King's birthday as a twelfth holiday, to be celebrated on the third Monday in January. Martin Luther King Day is currently a national holiday, and there is nothing in the evidence it should be substituted for a combined Presidents' Day; and nothing in the evidence that other comparable units have substituted Martin Luther King Day for other contractually listed holidays. Therefore the evidence does not require a finding for granting the City proposal; and accordingly the City proposal on Holiday is denied.

ISSUE NO. 18: PRINTING OF AGREEMENT

The City proposes an 80%/20% cost of printing; and argues that said percentages are based upon the distribution of printed contracts. The Panel notes there is nothing in the record the current percentage of the cost of printing the Agreement caused hardship or is a burden to either Party. Accordingly the Panel finds there is no current basis to grant the City position related thereto.

ARBITRATION PANEL'S AWARD:

The Arbitration Panel renders the following Award:

A. Issue No. 1: Salary

- 1) Retroactive to July 1, 1986, a 4% increase across the board for all Steps and Ranks; plus an additional \$100 upgrading for Firefighter
- 2) Retroactive to January 1, 1987, a 1% increase across the board for all Steps and Ranks
- 3) Retroactive to July 1, 1987, a 5% increase across the board for all Steps and Ranks; plus an additional \$100 upgrading for Firefighter
- 4) Effective January 1, 1988, a 1% increase across the board for all Steps and Ranks

B. Issue No. 2: Lunch Money

Retroactive to July 1, 1987, lunch money shall be sixty minutes at straight time, said payment to include injury on duty; which injury on duty is determined by the Commissioner, subject to grievance and arbitration.

C. Issue No. 3: Increments for Firemen and Superior Officers

Both the Union and City proposals for changes in Increments are denied.

D. Issue No. 4: Longevity

Retroactive to July 1, 1986, Longevity shall be as follows:

5 years...	\$ 200.00
10 years...	\$ 400.00
15 years...	\$ 600.00
20 years...	\$ 800.00
25 years...	\$1,200.00

Retroactive to July 1, 1987, Longevity shall be as follows:

5 years...	\$ 200.00
10 years...	\$ 450.00
15 years...	\$ 700.00
20 years...	\$ 950.00
25 years...	\$1,200.00

E. Issue No. 5: Dental and Medical Insurance

The City proposal for contributions to dental and medical insurance is denied.

F. Issue No. 9: Upgrading

Retroactive to July 1, 1986, Assistant Fire Alarm Dispatcher shall receive an additional \$500 per year, and Fire Alarm Dispatcher shall receive an additional \$750 per year.

G. Issue No. 12: Personal Leave

Effective January 1, 1988, twenty-four hour notice shall be given to the Fire Commissioner or his designee for personal leave; the Fire Commissioner or his designee may deny emergency leave, providing a reason is given for said denial, which denial should not be unreasonable.

H. Issue No. 14: Double Coverage

Effective January 1, 1988, where as a result of employment in or retirement from City service as defined in Article 1.5, the City shall not provide medical, dental or hospitalization for an employee or retiree where the spouse of said employee or retiree has comparable or superior coverage; and said employee or retiree shall receive an amount of \$600 in lieu thereof.

I. Issue No. 16: Holiday


The City proposal relating to Holiday is denied.

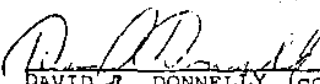
J. Issue No. 18: Printing of Agreement

The change in the cost of printing of the Agreement is denied.

Dated: September 23, 1987 Respectfully submitted,

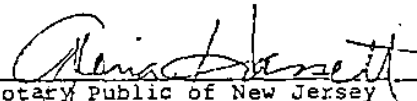

PAUL G. KELL, Arbitrator


RICHARD PLANAVSKY (concur) (dissent)


DAVID J. DONNELLY (concur) (dissent)

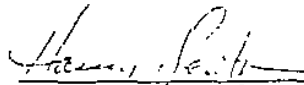
STATE OF NEW JERSEY)
COUNTY OF HUDSON) ss:

On this 23rd day of September 1987, before me, the subscriber, a Notary Public of New Jersey, personally came and appeared PAUL G. KELL, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged that he executed the same.


Notary Public of New Jersey
GLORIA MASSETT
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Jan. 18, 1992

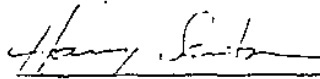
STATE OF NEW YORK)
COUNTY OF) ss:

On this 23rd day of *Sept* 1987, before me, the subscriber, a Notary Public of New York, personally came and appeared RICHARD PLANAVSKY, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged that he executed the same.


Notary Public of New York
Commission expires 1/18/88

STATE OF NEW YORK)
COUNTY OF) ss:

On this 23 day of *Sept* 1987, before me, the subscriber, a Notary Public of New York, personally came and appeared DAVID J. DONNELLY, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged that he executed the same.


Notary Public of New York
Commission expires 1/18/88

DISSENT TO THE AWARD OF THE ARBITRATION PANEL IN THE MATTER OF
CITY OF BUFFALO AND BUFFALO PROFESSIONAL FIREFIGHTERS ASSOCIATION LOCAL 282

CASE NO. IA 86-26;M86-352

I hereby dissent from the award of the panel in the matter of Interest Arbitration between the City of Buffalo and the Buffalo Professional Firefighters Association Local 282 for the contract period July 1, 1986 through and including June 30, 1988.

First and foremost, the reason for my dissent is that the award of the majority of the panel in this case is not the award to which the panel unanimously agreed in its executive session of September 21, 1987. I object to the manner in which the attached award was formulated in that it was done outside of and after the executive session of the panel and therefore not in keeping with the procedure to which this panel agreed to adhere in the conduct of the arbitration process.

The agreed procedure provided for an executive session at which session the award would be formulated. Specifically, the unanimous agreement of the panel on September 21, 1987, did not provide a 1% salary increase on January 1, 1988 for the members of the bargaining unit. While I note that the apparent trade off for the 1% increase on January 1, 1988 is the payment of increased lunch allowance retroactive to July 1, 1987 rather than July 1, 1986 as was unanimously agreed to on September 21, 1987, I still must dissent primarily because of the way in which the award was developed.

With respect to other matters in the attached award, I dissent specifically as follows:

- 1.) The City clearly showed that a pattern of salary increases voluntarily arrived at with five other City unions, should have been the salary increase awarded by the panel. These salary increases provided for 4% on July 1, 1986 and 5% on July 1, 1987. The 1% salary increases provided on January 1, 1987 and January 1, 1988 are clearly above this pattern.

It is true that the current award is considerably less than the original increases recommended by Arbitrator Kell on September 21, 1987, of 4%, 2%, 5%, and 3% (which incidentally were rejected initially both by the City and the union for differing reasons). However, as previously stated the panel unanimously agreed in executive session to provide just the 4%, 1% and 5% increases. I consented to the 1% increase on January 1, 1987 because it was the closest to the pattern to which the panel would agree.

- 2.) The City stated that its number one priority in the negotiations and subsequent arbitration proceedings was to obtain some type of co-payment from the members of the union in the matter of medical benefits. The panel discussed and agreed that the option should be provided to the union to receive the 1% salary increase on January 1, 1988, if and only if, the union would agree to a provision that would require members of the union to pay 50% of future increases in the cost of medical insurance up to a maximum of 1% of an employee's base salary.

The attached award goes beyond the agreement of the panel in its executive session of September 21, 1987 and provides the January 1, 1988 salary increase without granting the City its medical insurance co-payment proposal.

In general it is undoubtedly an arbitration panel's responsibility to make findings which have an evidentiary basis in the record, and to specify the weight given to each of these findings. It is also the panel's responsibility to analyze the evidence, determine whether support exists, or is non-existent, and explain its reasons for its determinations. The arbitration panel also must be aware of the Taylor Law criteria which governs it. Each criterion must be considered carefully by the panel, and none are to be neglected.

Whether this panel performed its responsibilities in satisfaction of the Taylor Law remains questionable. The record reveals there were three days of hearings before the panel, at which time numerous documents were submitted into evidence. Both parties filed pre-hearing and post-hearing briefs.

Despite the thoroughness of the presentation through both testimony, evidence and briefs, the Panel majority's discussion of its complete rationale, for the 10 consolidated issues, can be found in a mere eight pages. Interestingly, the simple reiteration of the parties' respective positions is lengthier, totalling 13 pages. Even more disappointing is the majority's failure to explain why evidence carries weight in one issue, but the same evidence does not carry weight in another issue. The majority also provides conclusions without explaining just how the conclusions were developed.

Most appalling is the majority's lack of examination of the City's ability to pay, except to say "the evidence requires a finding the financial position of the City has improved." For the majority to state such a simplistic statement as its findings and determination with respect to the City's finances is astounding, and causes one to question exactly what factors were taken into consideration when this award was fashioned.

For the above reasons, I must dissent from the award of the majority in this case.


RICHARD PLANAVSKY
CITY PANEL MEMBER