

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of the Compulsory Interests :  
Arbitration :  
between :  
The City of Syracuse :  
and :  
Syracuse Firefighters Association, :  
Local 220, International Association :  
of Fire Fighters, AFI-CIO, CLC :  
Case No: M74 -732 :  
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Opinion and Award  
of  
Arbitrator

Chairman: Maurice C. Renewitz, appointed by the Public  
Employment Relations Board, State of New York.

Appearances: For the City: Robert W. Kopp, Esq.  
Attorney

For the Association: Charles F. Blitman, Esq.  
Attorney

The parties to this proceeding were bound by a Collective Bargaining Agreement which expired on December 31, 1974. On November 29, 1974, after some four months of negotiations, the parties jointly petitioned the Public Employment Relations Board of the State of New York to appoint an Arbitration Panel to resolve the impasse between them pursuant to Section 209 of the Public Employees' Fair Employment Act as amended. In their joint petition the parties waived the jurisdiction of the Syracuse mini-PFERB with that body's consent, waived certain earlier intervention steps, agreed that counsel would serve as the non-voting representatives of the parties on the Board of Arbitration, and reserved all rights in the event that the 1974 amendments mandating arbitration were declared unconstitutional or unenforceable by a court of competent jurisdiction. The parties also agreed that the neutral Arbitrator designated would serve in the same capacity in the concurrent proceeding between the City and the Syracuse Police Benevolent Association.

On December 3, 1974, PFERB Director of Conciliation Erwin Kelly designated the undersigned Arbitrator to act as Chairman of the Board of Arbitrators. As stipulated by the parties, the Chairman was granted

sole power to render an Award in the matters at dispute despite the provisions of Section 209.4 (iv). Section 209.4 (v) sets forth a number of criteria which the Arbitrator shall consider in coming to an Award, including comparisons to wages and conditions of other workers similarly situated in public and private employment; interests and welfare of the public and the ability of the employer to pay; comparisons of job characteristics; and any other factors usually considered in determining wages, hours and conditions of work.

Hearings were held before the Arbitrator on December 18 and December 23, 1974 at Syracuse, New York. An executive session of the Arbitration Board was held in New York City on January 3, 1975.

The impasse between these parties was almost solely economic. The parties introduced a typescript of the Agreement showing changes agreed upon. Most issues had been jointly resolved prior to the instant proceedings.

The economic issues outstanding concerned the size of the basic pay package; what other fringe benefits, if any, should be provided; what should be provided in the Agreement concerning non-job-related sick leave; and what productivity improvements, if any, should be provided to the City. In addition, there were questions concerning wording of a discharge and discipline provision; and the wording, if such were possible, of a maintenance of benefits provision.

The parties produced before the Arbitrator extensive briefs and exhibits which clarified the complex economic problems faced by the City, indicated the present relative and absolute position of the employees, and afforded some valid comparisons and criteria on which a judgment could be based. The Association, in conjunction with the City, presented an elaborate financial report on the City by Dr. Robert Schram and Mr. Robert Berne of Cornell University. The report helped in an important way to clarify the data before the Arbitrator.

The Arbitrator is grateful for these extensive and careful presentations. In a proceeding fraught with important consequences to all the parties any binding decision should be based on the most complete

information possible. The parties have met their obligation to provide such a factual foundation.

#### Size of Overall Economic Package

The unit represented by Local 280 consists of all ranks of the Department from Firefighter through Fire Marshal. In 1974 there were 545 uniformed officers and men in the unit. There are 21 companies assigned to 15 stations throughout the City, plus a Fire Prevention Bureau and a Fire Control Center (City Brief 5, 6, Appendix 2). There are 4 platoons and all stations are manned 24 hours a day. It developed at the hearings that department personnel work a 40-hour week, and work 10 hours on the day shift and 14 hours on the night shift with an average workday of 12 hours. These work patterns were of some importance in the dispute concerning vacation entitlement for members of the department.

The Association in its Brief and exhibits developed statistics to show that firefighting is a particularly hazardous profession, perhaps the most hazardous profession. In view of the dangers involved, it believes that its members are entitled to substantial gains in compensations and benefits.

A top step firefighter earned \$11,855 in 1974. In addition, he received an average of \$281 for longevity, \$373 for holiday pay, \$150 for uniform allowance (\$75 in kind), plus \$118 in shift differential pay (City Brief 9, 23). Total payroll exceeded \$6,500,000 in 1974. There is an increment costing .79%, which will automatically be paid in 1975.

The City proposes to pay, in addition to increment, a total increase of 8% in each of the years 1975 and 1976. (If fringes are added, the City submits that their cost should come from the 8%.) Including the increment and the 40.9% pension contribution, the City estimates that its offer would cost for the 545 officers and men now in the Department \$778,000 in 1975 and would yield a top step firefighter salary

of \$12,803. The offer would cost \$837,000 in 1976 and would yield a top step firefighter salary of \$13,827 (City Brief 9, 10).

The Association proposes a contract of one year's duration that bargaining can resume when the City's financial situation for 1976 is better understood (Association Brief 17). For that one-year Agreement the Association requests a \$1,500 increase across the Board for firefighters 1 - 5 and a 15% differential between ranks for officers (Association Brief 8). In the event that the Arbitrator rules that a two-year contract shall be drawn, the Association requests a similar wage increase to that set forth above for the second year of the Agreement (Association Brief 18).

The Arbitrator takes notice that every other contract negotiated in 1974 with Syracuse employees or Board of Education employees has been for a 2- or 3-year duration. The Arbitrator takes notice that the Association has had a pattern bargaining relationship with the A in the past and that group in a concurrent proceeding is arbitrating the contents of a 2-year Agreement with the City. The Arbitrator sees no compelling reason to direct a one-year duration in this proceeding. Section 209.4 (vi) of the Statute empowers the Arbitrator to Award a duration of contract of 2 years. The Arbitrator finds and rules that the duration of the Agreement shall be for the period January 1, 1975 through and including December 31, 1976.

The \$1,500 demand would be a 12.6% increase on the salary of a top step firefighter in 1975 and an 11.2% increase in 1976 (computed by the Arbitrator).

The Association also demands that all fringe increases be paid in addition to the salary increase. Fringe demands include improvement in night differential, out-of-title pay, additional paid holidays, improved group health and dental coverage, additional personal leave, increased uniform allowances, triple-time change of schedule pay, an improved retirement plan, and immediate advancement to top pay for promoted officers. The City estimates that the total cost of the fringes

demanded is 20% to 25% of payroll and contends that the demands would further reduce the total number of hours a firefighter is available for service. The Association offers no estimate of cost.

The Arbitrator shall find and rule that the cost of the basic fringe benefit improvements which shall be Awarded must be deducted from the overall economic package. The rationale of this ruling is that the employee group must make a choice between general pay increases and fringe improvements since both have an economic cost. To impose a general increase without regard to the cost of fringes is to encourage unrealistic demands on the part of the employee group. The improvement concerning the guarantee of personal day merely assures to employees what they had won in previous contracts and had found difficulty in enjoying. The cost increase in the altered night differential will not be charged to the employee group because this change is requested by the City, which is prepared to bear the additional cost.

The parties differed widely on the proper standards of comparison to use in considering the overall package. Furthermore, they differed in their estimate of the City's ability to pay any increases greater than those here offered. The Arbitrator shall cite the types of evidence offered without presenting an extensive analysis of the competing positions. This is because, upon considering all of the data offered, the Arbitrator relied on certain criteria which were not strongly stressed by either party. As will become evident, this is true because the Arbitrator decided upon a package different from that offered by the City or that requested by the Association.

The City, in a number of exhibits, sought to show that since 1967 firefighter salaries have risen faster than the All-Cities Consumer Price Index (71.4% v. 50.6%) although in 1974 salary rose less than the CPI (9.2% v. 12% October 1973 to October 1974). The fall in real income for Syracuse firefighters was less in 1974 than for all wage earners (2.9% v. 4.5%). Furthermore, since 1967 Syracuse firefighter salaries have risen more than have incomes for U.S. nonagricultural manufacturing industries' employees.

The City contends that earnings in the "Syracuse Area" are low compared to Rochester, Buffalo or the State as a whole and that top grade firefighter pay was \$5.07 in April 1973 as opposed to average straight-time hourly earnings of production workers in Syracuse of \$4.20. (As the City footnote shows, however, in April 1973 firemen worked a 44-hour week and the City \$5.07 rate was computed on the basis of their working a 40-hour week.)

The City notes the high cost of firefighter fringes, \$2.72 per hour in 1973 v. a 1973 average of \$1.54 found in a survey of 742 companies. The Arbitrator notes that the obvious reason for this difference is the very large pension costs borne by the City. Not only is this cost required by law but the reason for it is quite clear: firefighters (and police) serve in a very hazardous and socially-necessary profession. As one compensation for the hazards inherent in this important work, the State Legislature has mandated a generous pension system. It is true that the pension is costly but it is also true that this is an inherent cost of fire protection in New York State and should not be held to be a reason why firefighters should receive less than other government employees.

The City also submits that the cost of a firefighter to the City has been magnified because of the decrease in working hours from 46 hours per week in 1972 to 40 hours per week in 1974. In 1972 hourly total cost of a top step firefighter was \$6.02; in 1974 it was \$9.22. This is a dramatic increase. But the reduction in hours worked resulted from a mandate of the New York State Legislature.

The City demonstrates that maximum salaries for firemen in Syracuse have risen faster than have such salaries in all U.S. cities of 100,000 to 250,000 population. In 1968 Syracuse was at \$7,600, while the national average was \$7,143. In 1974 Syracuse was at \$11,855, while the national average was \$10,889. Syracuse not only maintained but widened its advantage over these years.

For 1974, the Syracuse top scale for firefighters, \$11,855 is

\$1,233 above the average of equivalent step salaries in the ten largest upstate cities. Even this is understated because Syracuse firemen receive \$118 in shift differential pay. (Of course, they also have fewer paid holidays and so on; therefore, the last point is difficult to evaluate.) Furthermore, the scheduled average increase for 1975 in those cities is \$797 as opposed to the Syracuse offer of \$948. The City 1974 salary is \$235 higher than the average for Buffalo, Rochester, and Albany.

The City argues that it is inappropriate to use the higher Rochester firefighter salaries as a benchmark since, though Syracuse firemen trail Rochester by 11%, Syracuse production workers trail Rochester production workers by 10%. Rochester had higher personal income per capita, higher tax and borrowing potential and higher total city revenues per capita.

In Onondaga County only the City and the Town of Dewitt maintain a civil service fire department (at substantial cost). Syracuse pays much more than Dewitt and would continue to do so if the City's offer were Awarded.

The City further notes that in recently completed negotiations with other Syracuse public employee groups, settlements were reached averaging 7.94% in salaries for 1974-76 and 8.15% in total wage and fringe increases. Unrepresented employees are scheduled to receive an 8% increase in 1975. At the request of the Arbitrator the City later informed him that the 1975 settlement for teachers was 11.8%, including fringes and cost-of-living minus increment for 1976. However, average increases for teachers from 1969 to 1975 were 7.51%. For the same period, the Arbitrator has computed the fire (and police) average increase as 7.85%. Over this period the AFSCME Blue Collar unit received average increases of 8.24%, including increments and fringes; and the CSEA White Collar unit received average increases of 8.18%. The City argues that firefighters should not receive markedly greater increases than those given other units with which the Executive Department negotiates

(teachers negotiate with an independent Board). An examination of the past bargains among these units does not indicate that the City adhered to the principle of similar bargains in the past. For example, in 69 when fire (and police) received 5.7%, AFSCME received 12.0%, CSEA received 10.3% and the teachers received 11.9%. In 1973 when fire (and police) received 10.1%, AFSCME received 6.1%, CSEA received 6.9%, and the teachers received 2.0%. Thus, the principle that increases for all units should be roughly similar is clearly not one which ruled previous Syracuse settlements.

The City contends that 73% of its budget consists of personnel costs that will total \$36.8 million in 1975. The City for 1975 has already taken the action suggested by Dr. Schramm and Mr. Berne and transferred every possible item from operating to capital budget. The surpluses noted by the Association Consultants are by law reflected as an opening balance in the budget for the fiscal year two years after the surplus is accumulated. The City has expanded as much as possible its controllable revenues (28% of the total) and sought to control to the extent possible its discretionary expenses. The City is within \$20,000 of its property-tax taxing limit for 1975. In that year the budget is expected to balance. However, for 1976 a budget deficit of \$6.3 million is projected. Even changing assessments will have only a slow impact since the limit is based on a five-year average of the full value of taxable real estate. Only in 4 of the 9 years before 1975 has there been a constitutional tax margin in excess of \$100,000. It is argued that the inflated margins of 1973 and 1974 were caused by the influx of federal revenue sharing funds. However, the Association Consultants note that in those 2 years, 1973 and 1974, the constitutional tax margins were \$418,000 and \$2,390,000 respectively. The loss of revenue in 1974 alone equals the entire presently budgeted increase in employee wages and benefits for 1975.

The City finally contends that the percentage of the City budget devoted to fire protection has risen from 13.6% in 1967 to 16.1% in

1974 and is scheduled to be 16.2% in 1975.

The City submits that if its 8% plus increment offer is increased by this Award, other services will have to be cut to the City taxpayer. Furthermore, it may throw the City into deficit.

For all of these reasons, the City urges to Arbitrator to find that its package offer of 8.79% for each of the years 1975 and 1976 is fair and equitable.

The Arbitrator has already noted that the Association Consultant found unused taxing authority in 1973 and 1974. They found suspected underassessment of property. They found that Syracuse expenditures on fire (and police) were "considerably below average of similar cities in terms of expenditures per resident and expenditures per full assessed value of property within the City." The City increased its expenditures by 5% per year between 1971-75, while the school district increased its expenditures at the rate of 9% per year. The Consultants also believed that there were other revenue sources not reflected in the budget which could be tapped, and some were suggested.

The Association notes that at all ranks salaries lag behind those paid in Buffalo, Rochester and Yonkers. Even if \$1,500 per firefighter and a 15% differential for higher ranks were granted, Rochester and Yonkers would still exceed the Syracuse rates.

The Mayor of Syracuse has committed himself to seeking parity with the above-named cities and, indeed, progress was made in the past toward this goal. The present city offer of 8% plus increment abandons that movement toward parity, as testimony at the hearing noted.

Federal government figures also show that Syracuse salary levels are not rising as fast as average for firemen. From 1968 to January 1973 a BLS study shows that top grade firemen's salaries rose 50.2% in the Northeastern United States. For the same period the increase was 44.1% in cities with a population between 100,000 and 249,999. In Syracuse for the same period the increase was 38.88%.

During this same period productivity rose. There were more

inspections, more total dispatches and similar increases in other statistics by which work effort can be measured. For reason of this increased productivity a significant increase in income is justified. the Association argues.

The Association asks the Arbitrator to Award \$1,500 increases for each step, firefighter 1 - 5, plus 15% differential among ranks for each year of a two-year contract.

To achieve the 15% differential among ranks, it would be necessary to allocate additional monies from the overall economic package to the officer ranks. Since the general increase to be recommended below is set in percentage terms, these higher ranks will already be receiving more dollars than firefighters entitled to the same percentage increase. With restricted funds available for fire department salary improvements, it appears inequitable to allocate more to officer ranks than the percentage increase schema will already give them. The Arbitrator will not recommend a 15% differential among ranks.

The Association presents a number of demands concerning fringes, which will be discussed below. As noted earlier, most of the cost occasioned by such fringe improvements will be charged against the general economic package where fringe improvements are recommended. When such is not the case, the reasons will be set forth.

#### Discussion Concerning the Overall Economic Package

Even this brief exposition of the arguments and data of the parties indicates that using relatively similar sources of data the parties were able by selection and interpretation to come to very different conclusions concerning a proper economic package.

It does not seem relevant to the Arbitrator that the increases to the fire department under bargaining since 1967 have exceeded increases in the cost of living. One of the reasons why bargaining was mandated by the Taylor Law was, undoubtedly, the belief that without bargaining, government employees fell behind the general increase in living standards in the community. Indeed, all of the Syracuse

employee units did well under bargaining since 1967 and probably for the same reason. If the employees of Syracuse had not received increases since 1967 which exceeded the increases in the Consumer Price Index, the real income of these employees would either have remained static or fallen, at a time when real incomes in general were rising throughout the community. The phenomenon which the City points to merely proves that bargaining works as the authors of the Taylor Law intended that it should.

The Arbitrator might well have been convinced by the argument that firemen should not get higher increases than other units responsible to the City Executive Department if such uniformity had been practiced in the past. We have already seen that such was not the case in the years since 1967. There is no reason now to impose a uniformity which apparently has not been practiced in the past.

This becomes especially true when we find that another major unit of employees in this City, the teachers, received an 11.8% increase for 1975. It is argued that this was a catch-up settlement; but such large increases have gone to other units in several years since 1967, and it is not clear that all were catch-ups. It is further argued that the teacher unit bargains with a different employer. That obviously is true. But in its settlement the Board of Education draws from a common pool of resources. If it is proper to allocate City resources to employees of the Board, it is equally proper for the settlements given from those resources to be considered in other bargaining situations.

The City has argued that it is close to its constitutional taxing limit for 1975 and in a deficit situation for 1976, even if no increase greater than the 8.79% offer is awarded. The Association Consultants sought to show that considerable funds were being overlooked. The Arbitrator is not convinced that the Association has shown that extra funds are available in the areas it identified. He is sure, however, that a city which could forego \$2,800,000 in tax income in 1973 and 1974 cannot now argue that an increase otherwise justifiable is beyond

its means. Any increase directed by the Arbitrator above the City offer will cost only a small fraction of \$2,800,000. It is not within the power or the expertise of the Arbitrator to determine whether the City should have taxed below its capacity in 1973 and 1974. There may have been, and undoubtedly were, compelling reasons why this occurred. But City employees cannot be accused of driving the City to deficit if after such taxing action they seek an increase in compensation which is justified on other proper grounds.

The Association seeks to show that Syracuse spends less on fire (and police) than do other cities in relation to resources. The Association Consultants further note that school expenditures have risen more rapidly than have City expenditures in general. The Arbitrator finds neither of these contentions compelling. The relative allocation of resources among various social demands is obviously not immutable, as any study of social budgets will show. Indeed, the determination of such allocations is one of the major tasks of elected leaders in a democratic society. It would hardly do to award a fire department salary increase because the Arbitrator thought, if arguendo he did, that the increase in relative school expenditures had been too high. Indeed, any such consideration by the Arbitrator would be highly presumptuous and insulting to a community which has already vested in him an awesome amount of power in proceedings of this type.

Where then are we to look for guidance in finding an equitable settlement? The various groupings of cities suggested by the parties all have sufficient distinctions from Syracuse so that dependence on any of the suggested groupings might lead to injustice to one party or the other. When there are clear limits to the amount a City can pay an employee group, the cost-of-living statistics offer a useful guideline in reaching both upper and lower limits to a settlement. The firemen of Syracuse perform a valuable social function. They are permitted to bargain concerning the wages, hours and conditions under which this work will be performed. But these employees are forbidden by the Statute

under which they bargain from withholding their labor in the event of a dispute or impasse over wages, hours or conditions of work. Arbitrators and Fact-Finders have ruled that employees bargaining under such limitations should, wherever possible, at least be protected against a decrease in their real income, even if no increase can be awarded. This would here require an economic package in the area of 12%, since the 1973-74 increase in the All-Cities Consumer Price Index has been in that vicinity throughout the period during which these parties have been negotiating. A general increase of 11% plus the required increment of .79% would not only meet the CPI guideline, it would also afford to the Association members an increase almost identical in percentage terms to that granted by the Board of Education to its teaching employees. These criteria appear to the Arbitrator to be more appropriate than comparisons to Yonkers, Dewitt or other salary schedules cited by both of the parties.

The Arbitrator shall find and rule that the general economic increase for 1975 shall be 11%, plus the already scheduled increment of .79%. The Arbitrator shall not Award 15% differentials between ranks. The improvements in paid holidays to be recommended below cost .8% of salary payroll and the improvement in health insurance costs .6% of payroll. Thus, 9.6% of the economic package shall be paid across the board to increase each and every salary in the schedule, and .79% will be paid in addition as committed increments to those firemen contractually entitled to them.

It is less possible to arrive at a precise figure for the 1976 year of the Agreement, but the Arbitrator has ruled that there shall be a two-year Agreement. We do not know what the Consumer Price Index will be as of January 1, 1976. In any case, to provide that the increase will be based, per cent for per cent, upon the index as of January 1, 1976 would be to enter a large area of uncertainty into the City's fiscal planning. I, therefore, find and rule that the increase payable to members of the firefighter unit for the year 1976 shall be 8.5%, plus

increment to those firemen entitled to increment. I further rule that if the All-Cities Consumer Price Index increase from December 1974 to December 1975 shall have been more than 10%, then one-half of the increase above 10% shall be added to the 8.5% general increase. If the difference December 1974 - December 1975 in the All-Cities Consumer Price Index shall have been less than 7%, then one-half of the difference between the index and 7% shall be deducted from the 8.5% general increase.

One more matter of a wage nature remains before turning to consideration of fringe benefits and the City productivity demands. Under present policy a promoted fire officer receives an immediate \$300 increase but does not receive the full rate for his new position until completion of a six-month trial period. The Association requests that the promoted officer receive the full applicable rate immediately upon promotion.

The City is, of course, entitled to a full probationary period in which to judge the capacity of the promoted officer to perform in the new position. Granting the Association demand would in no way diminish the right of the City to conduct such a probationary test. But while the promoted officer is doing the work associated with the new position, the Arbitrator can see no reason why that officer should not receive the full compensation associated with the position. If he fails the probationary trial, he will return to the duties and compensation of his former position in conformity with the rules and contract provisions concerning probationary promotions. The Arbitrator finds and rules that promoted officers shall receive the full compensation applicable to their new rank immediately upon promotion.

#### Health Fringes and Non-job Related Sick Leave

##### Group Health Coverage

The City presently contributes 100% of the cost of coverage for employees under the group health insurance policy and 60% of the cost of dependent coverage. The Association requests that the City pay 100%

of the cost of dependent coverage. Each 10% increase in coverage costs .2% of payroll.

The Association notes that this benefit is provided in all three comparison cities of Buffalo, Rochester, and Yonkers (see Association Exhibit 17). The 1973-75 PERB Report on Fringe Benefits also shows that 100/100 coverage is provided in 43 of 52 bargaining units surveyed (Association Exhibit 18). The City suggests that this may have been occasioned by a trade-off for salary or other benefits. Whatever may be the case, the City will be paying on behalf of other employees negotiating with the Executive Department 75% of the cost of dependent coverage as of January 1, 1975 and 90% as of July 1, 1975. The Arbitrator can see no reason why such benefit should not be afforded to the firefighter especially in view of the fact that the .6% cost will be deducted from the 11% general economic package. The Arbitrator, therefore, finds and rules that the City shall pay 75% of the cost of dependent coverage for the group health insurance program as of January 1, 1975 and 90% of the cost of dependent coverage for the group health insurance program as of July 1, 1975 with the .6% cost deducted from the 11% general economic increase. The Arbitrator shall not grant the Association demand that carriers cannot be changed without mutual agreement of the parties.

Other Health Fringes: Dental

At present Buffalo, Rochester and Yonkers either have a full or partial dental insurance program or have one recommended. No employee of the City of Syracuse has such a coverage and PERB reports only 4 of 48 cities offering it to their firefighters.

It is difficult to cost such a plan in any case. In light of the substantial improvements provided in group health coverage, the Arbitrator shall not Award a dental coverage for this contract.

Non-job Related Sick Leave Policy

The current non-work related sick leave policy arises from a local ordinance (see Association Exhibit 21) and is not reflected in the Agreement between the parties. This program provides that after six

months of service, an employee in the fire department unit may use up to six months per year of sick leave.

The Association seeks to have this policy incorporated into the Agreement. The City, on the other hand, seeks to have the policy significantly altered and then incorporated in the altered form into the Agreement. This is one of the productivity proposals made by the City as an offset to the economic increases to be granted in the new Agreement.

The City notes that of 45 municipalities surveyed by PERB, 6, or less than 25%, provide either unlimited or 6-month leaves in this area. All other cities have more stringent limits than Syracuse. Furthermore, all other employees of the City of Syracuse (except fire and police, are limited to 15 to 18 days of sick leave per year with some maximum accrual. The City proposal would have the following characteristics:

- A. Firefighters would receive the following sick leave for non-job related illness:

Days	Years of Service
15	Up to 1
20	1 - 5
25	6 - 10
30	11 - 15
35	16 --

- B. Unused leave accumulative to 130 days  
C. Language to be added against abuse of privileges

While the Association understandably does not wish to have this extraordinary benefit reduced, the Arbitrator can see little justification for a sick-leave policy which is so generous for non-work related illness. Because of the hazards of their occupation, firefighters should have very great protection against death, illness or injury resulting from the performance of their duty. This they have in Syracuse and the City's proposal in no way reduces such protection. There is, however, little logical reason why firefighters should have so much greater protection against non-work related illness than other City employees have.

The Arbitrator shall, in principle, grant the City demand. He does believe, however, that it would not be just to reduce the present

sick-leave policy for all members of the fire department who have enjoyed the previous policy. Such policy was one of the benefits enjoyed when firemen joined the department. In view of the quick accumulation possible and the fact that some allowance would have to be made for uni- members of long seniority, the City will be little disadvantaged if the new sick-leave policy takes effect for all firefighters joining the de- partment as of the effective date of the 1975-76 Agreement and there- after.

Several other small changes or additions are also necessary. As point D of the policy set forth above, members of the department dur- ing their first 3 years may borrow up to 55 unused sick-leave days, which must be repaid by unused days before any further accumulation can occur. All members on the old and new programs must, as at present, have the approval of a departmental surgeon, if so required, before a sick-leave day may be taken.

The Arbitrator finds and rules that for new members of the de- partment as of the effective date of the 1975-76 Agreement the modified sick leave policy set forth above shall replace the present policy. For present members of the department, the current 6-month sick leave policy after 6 months of service shall continue. Both provisions shall be in- corporated into the language of the Agreement.

#### Vacation Credit for Days of Paid Leave

The problem of vacation credits will be one of the major dis- cussion areas of this Award. However, there is a relationship between vacation and sick leave or other paid leave, which shall be covered at this point.

The City requests that employees off the active payroll for sick- ness or other reason for more than 30 workdays in a calendar year have their vacation entitlement reduced pro rata. This is an entirely rea- sonable demand common in the private sector. The Arbitrator finds and rules that when an employee has been on sick leave for more than 30 work- days in a calendar year his vacation entitlement shall be reduced pro

rata from the first day of paid leave.

#### Night Shift Differential

The negotiations leading to the 1973-74 Agreement included agreement upon a night-shift differential of 2% for all work performed between 4 pm and 8 am. The City figure shows that a top step firefighter received \$118 under this provision in 1974 (City Brief 23). The Association proposes that this differential be increased to 15% of wages. The City proposes, as one of its productivity demands, that the differential be converted to a flat hourly rate of 15¢ per hour.

The City's proposed change would increase the cost of differentials in both years above that which would be paid under the present formula. The City estimates that the increase would be about 20%. In 1975 the firefighter would receive \$156 as compared to \$118.55 in 1974. At 2% of the 1975 pay he would have received \$129.21.

Despite the increase in cost, the City perceives a benefit in the change because there would not, in the future, be an automatic increase in the differential, as is true under a percentage formula, when salary increases.

Furthermore, other City employees receive a 10¢ differential for working the second shift and a 15¢ differential for working the third shift. The proposed change would bring firemen into closer conformity with this practice.

Finally, even after the change, if granted, the City submits, the benefit would still be almost unique, since very few municipalities in upstate New York pay a night-shift differential in any form.

The City proposes this change as beneficial to it. The Arbitrator shall grant the change but shall not charge the increase in cost to the overall economic package since the change is being made for the benefit of the City. There is logic in the City demand. If benefit and income increases are to accrue in the future to employees bargaining under the protection of the Taylor Law, then any improvements should arise out of current bargaining subject to all of the trade-offs

inherent in the bargaining process. Improvement should not be won without even a consideration of a quid pro quo. That the differential is being set in cents per hour does not mean that that differential will not increase in the future; the differential may well increase. But the increase will not be automatic; and the Arbitrator considers this to be just. The Arbitrator finds and rules that the night shift differential shall be 15¢ per hour for the 1975-76 contract period without any increase in cost being charged to the overall economic package.

#### Mandatory Retirement at 55

The City proposes, as one of its demands, that the mandatory retirement age be reduced from 62 to 55. The Arbitrator sees no reason to substitute his judgment for that of the Legislature, which set the 62-year age limit. Furthermore, the Arbitrator believes that any such action might well violate State and Federal law forbidding discrimination because of age. The Arbitrator finds and rules that he shall not recommend the City proposal to reduce the maximum retirement age to 55.

#### Additional Holidays and/or Personal Leave

The present Agreement (Article 8.1) provides for 8 holidays. This is the lowest number provided to any department surveyed by PERB and is lower than the 11 holidays provided to blue collar and white collar employees of the City of Syracuse. The Association seeks 4 additional holidays. The present Agreement (Article 19.6) provides for 1 personal leave day, which is also low in comparison to other fire departments. The Association seeks 3 personal leave days with a guarantee that they can be taken.

As the City notes, firefighters do not receive holidays as such. Rather, in December they receive a lump sum equal to one day's pay multiplied by the number of holidays in the Contract (8 in Syracuse). Any increase in the number of paid holidays amounts to an increase in compensation for working the same number of days. Any increase in personal leave days amounts to a decrease in the number of days an employee is

required to work for the same salary. Both types of change have an economic cost which the City shows to .4% for each additional paid holiday.

The Arbitrator finds and rules that 2 additional paid holidays shall be added to the 8 paid holidays now provided in the Agreement and that the cost of .8% of salary payroll shall be deducted from the overall 11% economic package.

Since the Arbitrator has increased the number of paid holidays, he shall not increase the number of paid personal leave days. However, testimony was offered at the hearing to show that employees have experienced difficulty in receiving even the one day presently provided in the Agreement. The Arbitrator finds and rules that a benefit provided in the Agreement should be available to employees meeting reasonable regulations. He rules that the Contract shall be amended to guarantee receipt of the personal leave day under the following conditions:

Leave shall be granted to the first officer applying at least 3 days before the requested leave date unless a genuine emergency exists on the requested leave date.

Where a request is made 30 or more days in advance, seniority shall prevail.

No more than 3 men per shift shall be guaranteed a grant of personal leave on any one day. The Department may limit such grant on any shift to 1 man per company.

#### Uniform Allowance Increase

At present, members of the unit receive \$75 in vouchered uniform replacements and \$75 as a cash payment toward the cost of upkeep of uniforms (Article 10.1 and 10.2). There is evidence that this policy is less generous than that of many other cities (see Association Exhibit 17). The Association requests a \$25 cash increase.

While there is merit in the Association request, the Arbitrator shall not grant it since he has already provided substantial economic benefits for the members of this unit. To decline a demand for an additional \$25 allowance, even if abstractly justified, may be considered a de minimis action in view of the 9.6% (plus increment) general increase.

in year 1 and 8.5% plus increment (within upper and lower limit) general increase in year 2, plus the improvements in holiday pay and dependent group health coverage.

Working Out of Job Title

The present Agreement has no provision concerning compensation for working out of job title. The City at the hearings amended its Brief to agree that both officers and firefighters are called upon to do out of title work. The City states that there is some indication that one reason for this phenomenon is the length of vacations accorded this department; we deal with vacations below. Association Exhibits 17 and 18 show that not only the comparison cities but a majority of jurisdictions surveyed by PERB compensate on a per diem basis for work done out of title.

The City indicates that difficult record-keeping would be required if this benefit were granted. Furthermore, when such work is done, not all duties are assumed because the person on temporary assignment is not fully acquainted with the work. Full compensation is, therefore, not justified.

Per diem adjustments for out of title work are not at all uncommon in collective bargaining agreements. There should be a provision against payment for short periods which have a de minimis impact on the employee temporarily assigned. This, also, cuts the record-keeping and cost. It is true that the employer may seek to cut costs by ending the assignment just before the cut-off time ends, but such action does not occur in relationships based upon good faith and will not occur under the provisions the Arbitrator grants. The Arbitrator finds and rules that whenever a member of the fire department unit is required to perform the work of a higher classification for one shift or more (10 hours on day shift, 14 hours on night), such employee shall receive supplemental compensation, raising his pay for the time worked to the per diem rate of the rank to which he was temporarily assigned.

### Shift Schedule.

The Association requests that the following language be added to the first full sentence of Section 13.1 of the Agreement: "working on a 40-hour work schedule as required by law." The Arbitrator rules that this language shall be added to Section 13.1.

### Maintenance of Benefits Clause

At present, there is no guarantee that rules and conditions of work not specifically provided for in the Agreement will remain unchanged during the life of the Agreement. Such a provision is not uncommon in the private sector.

However, there are substantial difficulties in simply directing the inclusion of a maintenance of benefits clause. The parties cannot now list what rules, oral and written, practices and procedures would be frozen by a maintenance of benefits clause. The Arbitrator, on the other hand, is unwilling to take so basic a step without understanding its full implications. The same problem might still exist in future proceedings as well, unless the rules, benefits, and privileges covered are codified.

The Arbitrator suggests that a joint committee of 6--3 appointed by the Chief of Fire and 3 appointed by the President of the Association --examine and codify the rules, regulations and practices binding on or benefiting members of the department, but which are not covered explicitly in the Collective Bargaining Agreement.

### Discharge and Discipline

At the executive session held on January 3, 1975, the parties agreed to substitute the following language, "Discharge and Discipline" for that currently included in the Agreement and the Arbitrator rules that the following language shall be adopted:

#### Procedure in Disciplinary Disputes

In the event of a dispute concerning the discipline or discharge imposed upon a firefighter, the following procedures shall be followed:

Step 1. Within ten calendar days after initial disciplinary action is taken by the Department (whether such action is final or

tentative), the firefighter must serve written notice as described in Section 11.2, if he desires to elect to follow the Step 2 and Step 3 procedures of this Article. Failure to make a timely election shall automatically mean that the procedures of Section 75 of the Civil Service Law shall be followed, and there shall be no right to arbitration under the provisions of this Agreement. If the firefighter waives his Section 75 rights and makes a timely election for arbitration, then the remaining Steps will be followed.

Step 2. Following either initial tentative disciplinary action (e.g., suspension for misconduct pending further investigation or reprimand pending further investigation) or where the initial disciplinary action taken was final (e.g., imposition of 90 days' suspension without pay or demotion or discharge), there shall be a meeting within 5 days of the election or within 8 days of the disciplinary action, whichever is first, if requested by the Association between up to three representatives of the Chief and up to three representatives of the Association for the purpose of discussing the case and arriving at a just and equitable settlement. Both the Chief and the Association may be represented by counsel during this meeting.

Step 3. The parties jointly designate and select the following Arbitrators to serve for the life of the Agreement in arbitrating matters of discharge and discipline under this article: \_\_\_\_\_ ; \_\_\_\_\_ ; \_\_\_\_\_ . As a member of the panel hears a case, his name shall move to the bottom of the list and the next 2 names shall move up. If an Agreement is not reached in Step 2, the Association may file in writing (copy to the City) a request for arbitration with the panel member at the head of the list. If that arbitrator cannot provide a hearing date within 30 days of the date of request, the Association may on its option, ask the next member of the panel for a hearing date; and if he cannot provide a date within 30 days, the Association may request, on its option, the third panel member for a hearing date. The finding of the arbitrator shall be final and

binding upon the parties. If such written request for arbitration is not served on the City within 30 calendar days of the imposition of final discipline, the dispute shall be deemed waived, and there shall be no right to arbitration or recourse to Section 75 proceedings.

#### 11.2 Effect of Election

To elect the procedures set forth in Steps 2 and 3 of Section 11.1, the fireman must file a written notice of such election with the Chief within the time limits set forth in Step 1 of Section 11.1. Such election must include a written waiver of all rights under Section 75, including limitations as to type or degree of punishment or to any right to reinstatement under Section 75, or otherwise, pending final determination by the arbitrator selected, or to the holding of a hearing within a 30 day period of suspension without pay.

#### 11.3 Departmental Investigation

It is understood that, notwithstanding an election by the fireman to follow the procedures of Steps 2 and 3 above, the Department may investigate the facts surrounding the grievance in any manner it deems appropriate, subject to the terms of this Agreement, including the conduct of a hearing as authorized pursuant to Section 75 of the Civil Service Law. However, should the Chief, in his discretion, decide to hold such a hearing, the fireman under investigation shall not be bound by the results of said hearing, nor shall he be obligated to appear in person or by counsel. Counsel for the Association shall have the right to examine the transcript and exhibits of the Section 75 hearing, if held, and to make copies thereof at the Association's expense.

#### 11.4 Conduct of Arbitration Hearing

In any arbitration hearing held under the provisions of this Article, both the Department and the fireman involved shall have the right to be represented by counsel and to present witnesses and engage in the cross-examination of witnesses presented by the other party. The arbitration hearing shall be a de novo proceeding, and a decision shall be made by the arbitrator on the basis of the legal evidence as

presented at the arbitration hearing. The Arbitrator is mandated either to accept the departmental penalty or to reject it in full or to fashion a lesser penalty if such is in his judgment required, but the Arbitrator may not remand to the parties for the creation of alternative remedies. The fees and necessary expenses of the arbitration proceedings shall be shared equally by the City and the Association. Each party shall bear the expense of the preparation and presentation of its own case.

#### 11.5 Limitations on Arbitrator's Authority

The arbitrator shall have no power to add to, subtract from or change any of the provisions of this Contract, nor shall he have authority to render any decision which conflicts with a law, ruling or regulation binding upon the City by a higher authority, nor to imply any obligation on the City which is not specifically set forth in this Contract.

#### Union Representation

The Association requests that Article 19.9 be amended so that it reads (as further amended by the Arbitrator):

If any member of the bargaining unit is formally confronted by a superior relative to possible disciplinary action concerning job performance, the Association must be notified 48 hours in advance of such confrontation unless there is need for summary action. If summary action is required, an attempt must be made to notify an Association official before the meeting with the affected employee proceeds.

The Arbitrator finds and rules that the above language shall be substituted into the Agreement. He notes that meetings without representation may be held, but unless the reason for the meeting was the necessity for summary action, such meeting may never be used as proof of a warning, reprimand, or other departmental action taken consistent with any formal program of corrective discipline.

#### Transfers

The Association seeks new contract language providing that when a vacancy occurs, such vacancy shall be awarded on seniority to the

most senior qualified firefighter after an 8-day posting. It is argued that this provision has no cost to the Department. Further, since it specifies that the successful bidder must be qualified, there is no element of danger involved. No citation is offered showing that such a provision exists in other comparable Agreements.

The City objects to this request. It indicates that there are Departmental reasons such as efficiency and training why all Companies should have or should have the possibility of having a mix of experienced and more junior men. No such mix could be assured under the seniority language proposed.

The Arbitrator believes that absolute seniority transfer rights must cause a problem in a department of the type here involved. Training, efficiency, just allocation of responsibility--all might be undermined. The Arbitrator finds and rules that he shall not Award the requested language concerning transfer according to seniority.

#### Reopener Clause

The City requests that the present Contract language concerning wage parity with the police department be removed. While there seems little benefit from the language, police and fire having had equivalent wages during the entire history of bargaining reviewed in these concurrent proceedings, there seems to be little harm from the language either. Pursuant to these proceedings, police and fire salaries will remain at parity for 1975 and 1976. The Association objects to the removal of the clause and the Arbitrator does not see any likely damage to the City from allowing the language to remain. Therefore, the Arbitrator finds and rules that the wage reopener clause shall not be deleted from the Agreement.

#### Vacation Benefits for Firemen and The 8-hour Workday

Firemen work an average workday of 12 hours in a 40-hour week. They work 10 hours on day shift or 14 hours on night shift if assigned to line companies. (Some 30 department members work 8-hour shifts.

This following discussion does not pertain to persons on such shift.)

The average 12-hour day means that persons in line companies do not work a 5-day week. In the past, firefighters worked 60 or 70 hours a week with the 10- and 14-hour shifts. Their vacation benefits reflected such working conditions.

Pursuant to Article 9 of the Agreement, firefighters receive one as vacation workday per month up to one year of service, 14 workdays per year after 1 year of service and 21 workdays per month after the fifth year of service. Such a workday is the average 12-hour day which firemen work during their 40-hour week. For policemen and other City employees a vacation day equals 8 hours off with pay as opposed to 12 hours off with pay.

As the workweek of firemen has been reduced pursuant to State law, the workday has not been reduced. Since the vacation entitlement is set in terms of workdays, it has not fallen as the workweek has fallen.

Thus, firemen with one year or more of service receive <sup>168</sup>160 hours of paid vacation on 14 days and firemen with 5 or more years of service receive 252 hours of paid vacation on 21 days, policemen earning exactly equal salaries receive 144 hours of paid vacation on 18 days during their first 10 years of service, 168 hours of paid vacation on 21 days between 10 and 14 years of service, and 192 days of paid vacation on 24 days in the 15th and succeeding years of service. Other employees of the City receive even lesser vacation entitlements. The City shows that the average maximum vacation <sup>of firemen</sup> in the 10 largest upstate cities is 189.6 hours after an average of 13.2 years, whereas in Syracuse entitlement is 252 hours after 5 years. Even the Association comparison cities of Buffalo and Rochester have much less favorable provisions: 240 hours and 168 hours respectively after 20 years of service.

The reduction of vacation entitlement to 8 hours for 21 vacation days or 12 hours for 14 vacation days would save the City 35,000 man-hours, or \$400,000 annually at 1974 salary and fringe rates. Of course, in justice, the saving could not be that much. Presumably, the

entitlement would match that of police and be 192 hours after 15 years.

The firefighters argue that the language "work day" in the vacation clause is the result of hard bargaining and is a benefit to which they are entitled. There are other disparities with the police; for example, police automatically get veteran's days, firefighters do not. It is argued that it would be most unjust to deprive firefighters of this benefit.

The City also proposes establishment of an 8-hour workday for the department. Clearly, this would immediately accomplish the reform of vacation entitlement sought above. It is also argued that it might yield other economies and would lead to a safer workday. The Association opposes such change and the City admits that the major consideration is the vacation policy. Since the Arbitrator will reduce vacation entitlement without reducing the workday, he sees no gain to the City in granting an 8-hour day which the Association opposes. The Arbitrator finds and rules that the workday shall not be altered.

The Arbitrator also finds that he can see no logical reason why the great disparity in vacation entitlement should be allowed to continue between the police and fire departments and between this fire department and other fire departments. The wage reopener clause shows that the Association values parity with the PBA. With such a significant difference in paid working hours, such parity does not exist as fully as it should. It is true that this is a benefit won from past hard bargaining. Since that time salaries have risen and other benefits have been won. Past rights are not immutable, as the City has already discovered in the course of this Award. The City also has rights to a fair year's work from employees. The Arbitrator shall direct some reduction in current vacation entitlement. But since he realizes that this strikes at a cherished benefit, the Arbitrator shall below Award to the Association an additional pension program as partial offset. While this program has minimal additional cost to the City, it is a meaningful benefit in the view of the Association.

The Arbitrator finds and rules that maximum paid vacation benefits to members of the Syracuse Fire Department shall be up to 144 hours for up to one year of service, 156 hours for one year through five years of service, and 216 hours for six years of service and thereafter. Firefighters on 8-hour workdays shall have no reduction in current vacation entitlement but shall have their vacations increased to conform to the police schedule after the 15th year of service if such is not already the case.

#### Pension Proposal

The Briefs of the parties discuss at some length the relative advantages or disadvantages of adding as an optional retirement program that plan set forth in Section 375-i of the New York State Retirement Law. It is agreed that the additional cost to the City is very low (.1% for administration).

The Arbitrator has already indicated that he will Award this program in partial offset to the significant reduction ordered in paid vacation rights. The Arbitrator finds and rules that in addition to the present retirement plans offered to firefighters the City shall also make available the retirement program established under Section 375-i of the New York State Retirement Law.

#### Reservation of Jurisdiction

At the joint request of the parties, the Arbitrator shall retain jurisdiction to decide any disputes that may arise during the translation of this Award into Contract language. Such Contract language shall be completed within 10 days of the date of this Award.

#### Summary and Conclusions

In light of the foregoing discussion, I, the undersigned Arbitrator, having been appointed pursuant to Section 209.2 of the Public Employees Fair Employment Act and pursuant to a Stipulation executed by the parties on November 29, 1974, and having received extensive written and oral evidence and testimony from the able and well-prepared representatives of the parties at two public hearings, and having discussed

all of these materials with my fellow non-voting Arbitrators Robert W. Kopp, Esq. and Charles E. Blitman, Esq. in executive session, and having drawn from these discussions elucidation of points of evidence and testimony presented, now, therefore, I issue the following binding and final

AWARD

1. There shall be a two-year Contract between the parties for the calendar years 1975 and 1976.
2. The regularly scheduled increment shall be paid to each of the firefighters contractually entitled to such in each of the contract years.
3. In the year 1975, there shall be a general increase of 9.6% applied to each and every step of the 1974 salary schedule.
4. In the year 1976, there shall be a general increase of 8.5% applied to each and every step of the 1975 salary schedule with the proviso that should the December 1974 to December 1975 change in the All-Cities Consumer Price Index exceed 10%, then the 8.5% shall be increased by one-half of the difference between 10% and the actual increase in the CPI and with the further proviso that should the December 1974 to December 1975 change in the All-Cities Consumer Price Index be less than 7%, then the 8.5% shall be decreased by one-half of the difference between 7% and the actual change in the CPI.
5. Upon promotion, officers shall immediately receive the full compensation applicable to their new rank.
6. The Arbitrator does not direct establishment of 15% differentials between the ranks or an increase in uniform allowance.
7. The City shall assume 75% of the cost of dependent coverage under the group health program as of January 1, 1975. The City shall assume 90% of the cost of dependent coverage under the group health program effective July 1, 1975. The Arbitrator does not grant the demand that carriers may not be changed by the City without mutual agreement of the parties.
8. The Arbitrator does not recommend establishment of a dental insurance program.
- \*9. For members of the unit as of December 31, 1974, the present non-job related sick leave policy shall be entered as a provision of the Agreement. For all new members of the force as of January 1, 1975, the Sick Leave policy shall provide 15 days of leave up to 1 year of service, 20 days per year of leave from 1 to 4 years of service, 25 days per year of leave from 6 to 10 years of service, 30 days per year of leave from 11 to 15 years of service, and 35 days per year of leave from the 16th year of service and thereafter; unused days of such leave to be cumulative to 130 days; members of the unit in their first 3 years of service may,

if necessary, borrow up to 55 days of sick leave if that number of days has not been used, such borrowed days to be repaid by unused days before any further accumulation may occur; approval of the department surgeon may be required before any sick leave day is taken under either the existing or new policy.

10. After an employee has been on paid leave for more than 30 workdays in a calendar year, his vacation entitlement shall be reduced pro rata, beginning with the first day of paid leave taken in the calendar year.
11. The night differential shall be 15¢ per hour for the 2 years of the 1975-76 Agreement.
12. The Arbitrator does not recommend or Award a lowering of the mandatory retirement age to 55.
13. There shall be two (2) additional paid holidays per year.
14. The paid personal leave day shall be guaranteed to unit members meeting the conditions set forth in the body of this Award as to date of application, provided no more than 3 men per shift may be guaranteed a grant of personal leave on any one day and provided that the Department may limit personal leave to 1 man per Company per shift.
15. The Arbitrator recommends the establishment of a Joint Committee to examine and codify rules, regulations and practices binding on or benefiting Association members, but which rules or practices are not covered explicitly in the Collective Bargaining Agreement.
- \*16. When a member of the unit is required to perform the work of a higher classification for one shift or more (10 hours on day shift, 14 hours on night shift), such employee shall receive supplemental compensation, raising his pay for the time worked to the per diem rate of the rank to which he was temporarily assigned.
17. The words "working the 40 hour work schedule as required by law" shall be added to the first full sentence of Section 13.1 of the Agreement.
18. The Arbitrator does not Award the deletion of the wage reopener clause.
19. The Arbitrator Awards a change in the language of Section 19.9 to read as set forth in the body of this Award.
20. The Arbitrator does not recommend the transfer policy based on seniority requested by the Association.
- \*21. The vacation rights of department members (except those working 8-hour shifts) shall be reduced to the following paid maxima:
  - up to 144 hours for up to 1 year of service
  - 156 hours for 1 - 5 years of service
  - 216 hours for the 6th year of service and thereafter.

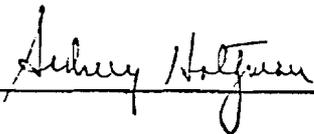
22. The City shall make available, in addition to pension programs presently offered members of the Fire Department, the program established by Section 375-i of the New York State Retirement Law.
23. The New language set forth above on Discharge and Discipline shall be adopted in the place of the present language in the Agreement.
24. At the joint request of the parties the Arbitrator retains jurisdiction to decide any disputes which may arise during the translation of this Award into Contract language, such Contract language to be drawn within 10 days of the date of this Award.

  
Maurice C. Benewitz  
Chairman and Arbitrator

Dated: January 9, 1975

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

On January 9, 1975 before me personally came MAURICE C. BENEWITZ to me known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

  
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NOTARY PUBLIC  
STATE OF NEW YORK  
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STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of the Arbitration between :  
City of Syracuse :  
and :  
Syracuse Fire Fighters Association, :  
Local 280, 1 A FF, AFL-CIO :  
.....

Opinion Award  
of  
Arbitrator

Arbitrator: Maurice C. Benewitz, designated by Public  
Employment Relations Board

Appearances: For the Union: Charles E. Blitman, Esq.,  
Attorney

For the Company: Robert Kopp, Esq.,  
Attorney

A hearing was held before the undersigned Arbitrator on February 10, 1975, at the Public Safety Building, Syracuse, N. Y., pursuant to the provision of the Award of the undersigned dated January 9, 1975 in which, at the request of the parties, the Arbitrator retained jurisdiction to resolve any dispute arising from the embodiment of the Award in contract language.

At the instant hearing, questions were raised concerning which two additional holidays should be specified in the Agreement; how the leave for sickness for new employees should be measured; to whom out-of-title work should be assigned and on what basis; and of how overtime is to be assigned under a provision which the parties did not present at the original hearing, since they expected to be able to resolve the question. Since the parties were unable to resolve the overtime question, they presented it to the Arbitrator at this hearing.

1. Holidays

For certain retiring or very new employees as opposed to the majority who work the entire year, it is of some importance where new holidays are situated in the annual calendar. The Association has proposed Easter and Good Friday. These seem too closely spaced. Instead, the Arbitrator will find and direct that the two new holidays shall be

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD  
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FEBRUARY 11 1975  
CONCILIATION

Easter and Memorial Day--such latter being the Monday so celebrated as a national holiday.

## 2. Sick Leave for New Employees

The Arbitrator, while "grandfathering" present employees in the old non-work-connected sick-leave plan providing up to six calendar months of leave, changed this plan for new employees. He provided gradually increasing numbers of sick-leave days per year with the right to accumulate unused days up to a maximum of 130. He did not, however, specify how a day should be measured. This causes difficulties since firemen work 10- and 14-hour shifts: 2 of each and 4 days off in every period of 8 days to achieve an average 40-hour week.

The Association asks that the Arbitrator rule that the word "days" mean workdays. Otherwise, if, as the City proposes, hours are used, an illness of the same number of calendar days will cost a fireman more hours than a policeman, who only works 8 hours. Even though the City does not propose to charge employees under the new plan for such leave on days when they were ill but not scheduled to work, this plan would be unequitable. It is true that for any illness lasting a week, the charge to firemen or policemen would be roughly the same since firemen work fewer days in a week. But most illnesses last only a day or two. Thus, firemen will be charged more hours than policemen under a supposedly identical plan.

The City notes that if the Arbitrator were to define a day as a workday, policemen would get fewer hours of leave than firemen. The Award of January 9 made a beginning of removing the inequity in vacations based on workdays. The Association request would simply create a new inequity.

The City also notes that under the new plan a fireman who accumulated 130 12-hour days would be able to be off for 80% of an average fireman's work year. This is more than the 50% which firemen grandfathered into the supposedly over-generous present plan now have. The Association concedes that firemen under the new plan should not be able to accumulate more leave than the 6 month calendar maximum enjoyed by

old employees. However, if its definition of a sick day is accepted, new firemen would accumulate to the maximum faster than new policemen.

The Arbitrator meant in his Award to create as closely as possible absolute equality between time worked in a year for firemen and for policemen. He meant that each group would have first 15, then 20, and so on 8-hour days of such leave accumulable to 1,040 hours. To cover the early period where a serious illness might quickly exhaust current and accumulated sick days, he provided that in the first 3 years of employment, an employee borrow up to 55 days (440 hours) of sick leave to be repaid out of unused days before any further accumulation. Since in a given sickness, firemen may be charged more hours than policemen, this might cause an injustice in early years before any substantial accumulation could have occurred. Therefore, while declining to rule that a "day" referred to in the January 9 Award shall be a "work day," the Arbitrator does rule that firemen for whom a day shall be an 8-hour day, shall be allowed to borrow 480 hours (60 days) rather than 440 hours (55 days). I so find and rule.

### 3. Assignment of Out-of-Title Work

In the January 9 Award, the Arbitrator provided that when a unit member is assigned to do the work of a higher classification for one full shift or more, the employee for that period shall be paid at the higher rate of the classification to which he has been temporarily assigned.

The Association requests the Arbitrator to rule that such opportunities should be assigned on the basis of seniority. It is argued that in almost every case that is what the practice has been. Where the senior man has not received the assignment, the reason has invariably been that the senior employee did not want the special assignment.

The City notes that the Arbitrator refused to approve transfer on the basis of absolute seniority in his main Award. It submits that some senior men may be unable to assume command responsibility and that it would be hazardous to require such. This is why officers are not selected on the basis of seniority. While it is true that in the majority

of cases out-of-title work has been assigned to the senior man because he was capable of doing it, discretion must be left with the Department to refuse assignment to men not able to do the work or not able to do it as well as some more junior firefighters.

The Arbitrator does believe that senior men who can do the work should have the opportunity, unless a junior man is clearly and demonstrably superior. The Department should have the flexibility to appoint a junior man when the senior man is clearly and demonstrably less able to do the work, however. The Arbitrator, therefore, rules that senior firefighters shall be assigned to temporary out-of-title higher classification openings unless a junior man is "heads and shoulders" superior to the senior eligible employee or employees.

#### 4. Overtime

At the hearings preceding the issuance of the January 9 Award the parties indicated that they were not placing before the Arbitrator certain issues concerning overtime because it seemed probable that they would jointly resolve the issues. Thereafter, the parties did resolve a number of questions regarding the distribution of overtime but were unable to resolve whether assignments to fill some position should come from firemen scheduled to work but on the other shift that day or from firemen not scheduled to work. There is an obvious budgetary difference. If a fireman scheduled to work the day shift (10 hours) is moved to night (14 hours), he is paid time and one-half for the extra 4 hours, i.e. his reassignment costs the City 6 hours' pay. If an off-duty fireman is called in, as the Association proposes, when such overtime is needed, the fireman will be paid 14 hours at time and one-half, or 21 hours pay, and the other fireman on day will still be paid for his 10 hours of work. The difference is between 6 extra hours of pay and 21 extra hours of pay.

The Arbitrator shall not consider this issue because he does not believe that it is properly before him. Prior to the December 1974 hearings, the Association had a similar but even more costly proposal on the table, involving payment of triple time when shifts were changed. This

proposal was withdrawn before Arbitration and may not now be raised in this hearing. While the issue might properly have been presented as an open matter in the hearings-in-chief, the withdrawal of the overtime demand precludes the raising of the overtime issue in the proceedings concerning the content of the 1975-76 Agreement. The Arbitrator so rules.

5. Relinquishment of Jurisdiction

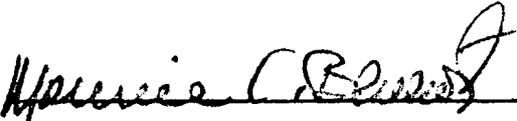
With this interpretative Award, the Arbitrator relinquishes his retained jurisdiction to interpret the January 9 Award. He rules that with the execution of this Award he shall become, in the dispute between the City of Syracuse and the Syracuse Fire Fighters Association, functus officio.

In light of the foregoing discussion, I, the undersigned Arbitrator, having been requested to exercise my retained jurisdiction under the Award dated January 9, 1975, to interpret that Award, and having heard the arguments of counsel concerning the differing interpretations of certain points in the Award-in-chief, now issue the following binding interpretative

AWARD

1. The two additional holidays for the unit shall be scheduled on Easter and on the Monday in May on which Memorial Day is celebrated as a national holiday.
2. A day of sick leave shall be 8 hours in the plan for employees appointed after January 1, 1975. However, Firefighters in their first three years of employment shall be able to borrow 480 hours (60 days) instead of the 55 days (440 hours) specified in the Award of January 9, 1975.
3. When an assignment to temporary out-of-title work in a higher classification is available for one or more full shifts, the senior employee available shall receive the assignment unless a junior employee is "heads and shoulders" superior to the senior eligible employee or employees.

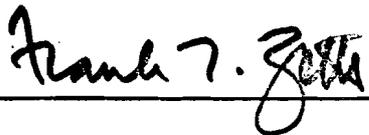
4. The question of overtime assignment and payment insofar as it goes beyond those agreements mutually reached by the parties is not properly before the Arbitrator.
5. The Arbitrator now relinquishes jurisdiction in this dispute and rules that he is, with the execution of this Award, functus officio.

  
Maurice C. Benewitz  
Arbitrator

Dated: February 19, 1975

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

On February 19, 1975 before me personally came MAURICE C. BENEWITZ to me known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.



FRANK T. ZOTTO  
Notary Public, State of New York  
No. 41-9811480  
Qualified in Queens County  
Commission Expires March 30, 1976



MAURICE C. BENEWITZ

261 Thompson Shore Road  
Manhasset, N.Y.  
11030

January 9, 1975

Hon. Erwin Kelly,  
Director of Conciliation  
PERB  
50 Wolf Road  
Albany, N. Y. 12205

Dear Mr. Kelly:

I enclose herewith 2 copies of the Syracuse PBA Award and 2 copies of the Syracuse Firefighters Award. I also enclose your report form. I assure you there will be no billing complaints. The parties asked for these Awards by January 9. They are signed in blood.

Very truly yours,

  
Maurice C. Benewitz  
Arbitrator

MCB:j

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