

NEW YORK STATE  
PUBLIC EMPLOYMENT RELATIONS BOARD, ADMINISTRATOR

In the Matter of the Compulsory  
Interest Arbitration between

CITY OF AUBURN

and

AUBURN FIRE FIGHTERS  
ASSOCIATION  
LOCAL 1446, IAFF

AWARD OF  
PUBLIC ARBITRATION PANEL

Case No.: CA-0014  
M74-260

NEW YORK STATE PUBLIC EMPLOYMENT  
RELATIONS BOARD  
RECORDED

DEC 2 1975

BEFORE Alice B. Grant, Neutral Chairperson  
Hon. Paul W. Lattimore, Employer Panel Member  
Charles Blitman, Esq., Employee Panel Member

CONCILIATION

APPEARANCES

FOR THE CITY

John J. Pettigrass, Corporation Counsel  
Bruce Clifford, City Manager  
Richard N. Chapman, Harris, Beach and Wilcox,  
of counsel to the City  
William D. Maywalt, Fire Chief

FOR THE FIRE FIGHTERS

Bernard T. King, Attorney  
John P. Jeanneret, B & K Employee Funds Service  
James R. LaVaute, Attorney  
J. Christopher Keogan, President  
Patsy DiNonno, Vice President  
Stan Bilinski, Member, negotiating committee  
Robert C. DeChick, member, negotiating committee  
Andrew Guter, member, negotiating committee  
Robert Tessonì, member, negotiating committee

PROCEDURE

A hearing in the above matter was held in the City of Auburn, New York, on August 6, 8, and September 8, 1975, before the undersigned members of the Public Arbitration Panel who were designated in accordance with the compulsory interest arbitration procedures of the New York State Public Employment Relations Board. At this hearing both parties were given full opportunity to

present their evidence, testimony, and argument, to common witnesses who were sworn, and to engage in their examination and cross examination. Both parties asked to file briefs which were to be postmarked on September 26, 1975. At the request of the Fire Fighters an extension for filing the briefs was granted, and the briefs were received on October 3, 1975, at which time the record was closed.

The Public Arbitration Panel met in a pre-hearing administrative session to determine the procedures to be followed and decided not to require a transcript of the hearing. Following the close of the hearing the Panel met in executive session on October 7 and October 27, 1975, to reach a decision on the issues.

#### THE ISSUES

Four issues were presented to the Panel:

1. Wages
2. Cost of living allowance
3. Hospitalization and Medical-Dental Insurance
4. Pension plan

#### BACKGROUND

The Fire Fighters have been working under the terms of an agreement which expired on June 30, 1974. A Fact Finder was appointed in July, 1974, and on October 4, 1974, the Fact Finder issued his report. This report was not accepted and on January 22, 1975, the Union petitioned the Public Employment Relations Board requesting that the impasse be referred to a public arbitration panel. The City, on February 11, 1975, obtained an order of the Supreme Court restraining PERB and the Fire Fighters from proceeding under the law. After the amendments to Section 209 of the Civil Service Law were declared to be constitutional by the New York State Court of Appeals,

PERB effected the provisions of Section 209.4 of the Civil Service Law and on July 14, 1975, the Public Arbitration Panel members were designated.

AWARD on Issue Number 1 -- Wages

In arriving at its determination the Public Arbitration Panel gave full consideration to the report and recommendations of the Fact Finder; the comparison of wages, hours, and working conditions of the City Fire Fighters with those in comparable areas; the interests and welfare of the public and the financial ability of the City to pay; and the working conditions which are unique to Fire Fighters.

Since the Panel was making its deliberations over a year after the issuance of the Fact Finder's report, the Panel had the advantage of hindsight in weighing the Fact Finder's recommendation of a 9% increase in each of the two years of the Contract. After careful and extensive deliberations the Panel selected nine cities in the State which could be considered comparable to Auburn. Although this is difficult since no two cities compare perfectly, the Panel selected those cities north of New York City which are separated from large metropolitan areas and are of comparable size. These cities are Elmira, Ithaca, Jamestown, Kingston, Lockport, Middletown, Newburgh, Poughkeepsie, and Watertown.

Using statistics from the PERB Research Department for these cities the Panel determined that the average salary for Fire Fighters at the top of scale, excluding longevity payments, is \$11,199 in 1975. The Fact Finder's recommendation, if accepted, would have provided the Auburn Fire Fighter with a salary of \$11,527. Although this salary is \$328 over the average of the other nine cities, seven of these cities operate on a different fiscal year and will bargain any new increases in salary as of January 1, 1976. In all likelihood the salaries of Auburn Fire Fighters, after January 1, 1976, will be lower than the average of Fire Fighters in those cities, but the Panel also

gave consideration to the fact that Auburn Fire Fighters receive higher longevity payments than is average for the comparable cities.

A 9% increase in each of the two years is very close to the City's offer of 8.7% in the first year and 8.2% in the second year. The city does not argue inability to pay, although like other cities, financial problems are of major concern. Unlike many other cities, however, the City of Auburn has an increasing financial base because of the establishment of new industry and the expansion of one of its existing industrial plants.

Based on these criteria the Panel therefore determined that an across-the-board increase of 9% in each of the two years of the contract would constitute a fair resolution of the wage issue.

This award of an increase to the Fire Fighters, however, comes seventeen months after the expiration of the prior contract between the parties. Although the resolution of impasses may sometimes extend beyond the expiration of a contract, this exceedingly long period of time was in major part caused by the City's action in obtaining a stay of the arbitration proceedings. Since the City bears the responsibility for what amounts to a ten month delay (January, 1975 to November, 1975), the Panel also awards the payment of interest at the rate of 6% per annum. The interest is to be computed on the basis of each individual's increase in salary during 5/12 of the first year's increase (January through June, 1975) and 5/12 of the second year's increase (July through November, 1975). By this method of computation, for example, a Fire Fighter at Grade D should receive \$45.63.

AWARD on Issue Number 2 -- Cost of Living Allowance

The Fire Fighters have proposed a cost of living clause which would provide some insurance against a decline in real purchasing power. The City's answer is that since it raises its money through a single tax levy, it cannot accommodate to adjustments in salary throughout a budget year. Furthermore,

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the City points out that such clauses are not common in the public sector.

The Panel finds that cost of living clauses are appropriate where there are long-term contracts, but this is not the case here. Since this award is retroactive to July 1, 1974, almost three-fourths of the contract period has passed. Shortly after the receipt of this award the parties will be entering into negotiations during which they can take the cost of living into account in determining future increases.

For the above reasons the Panel denies the inclusion of a cost of living clause.

AWARD on Issue Number 3 -- Hospitalization and Medical-Dental Insurance

The Fire Fighters, who are presently covered by a fully paid basic dental plan, wish to have expanded dental benefits provided to themselves and to include their dependents under these benefits.

The Panel finds that the expansion of dental benefits would add a substantial cost to the City and that, furthermore, such enlarged benefits are not common among other public employees. For these reasons the Panel denies this proposal.

AWARD on Issue Number 4 -- Pension Plan

The Fire Fighters propose changing the present 25 year non-contributory retirement plan to a 20 year non-contributory retirement plan(384 d) and to add the guaranteed ordinary death benefit as provided by Section 360 b.

The Panel gave long and serious thought to this proposal, weighing both the very substantial increase in cost to the city and the particular health hazards to which the fire fighters are exposed. The Panel also consulted the PERB Department of Research and found that a large majority of Fire Fighter units in New York State are covered by the 20 year pension plan. More importantly, the Panel found that six of the eight cities which

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the Panel had determined were comparable to Auburn have the 20 year pension plan. Although the costs of this plan will create a burden for the City, there is no evidence that the City of Auburn has less financial ability to pay than the other six cities which presently provide for this pension.

Based on the above reasons the Panel directs the City to provide the 20 year retirement plan (384d) to its Fire Fighters as of January 1, 1976. In view of the minimal cost the panel also awards the adoption of the guaranteed ordinary death benefit as provided by Section 360b.

Now, therefore, as the duly designated Public Arbitration Panel, we hereby make the following

AWARD

1. The Fire Fighters shall receive a 9% across-the-board increase in salaries for the period from July 1, 1974 to June 30, 1975, and a 9% across-the-board increase for the contract year beginning July 1, 1975. In addition the City shall pay interest at the rate of 6% per annum on five months of the first year's increase and on five months of the second year's increase to each fire fighter on the payroll during this period.
2. The request for a cost of living allowance is denied.
3. The request for increased Hospitalization and Medical-Dental Insurance is denied.
4. As of January 1, 1976, the City shall provide the Fire Fighters the twenty year retirement plan (384d) and the guaranteed ordinary death benefit as provided by Section 360b.

Dated: November 10, 1975

Alice B. Grant  
 Alice B. Grant  
 Neutral Chairperson

STATE OF NEW YORK) SS:  
 COUNTY OF MONROE )

On this 10<sup>th</sup> day of Nov. 1975, before me personally came and appeared ALICE B. GRANT, to me know and known to me to be the individual described herein and who executed the foregoing instrument and she acknowledged to me that she executed the same.

Merle S. Hayes  
 MERLE S. HAYES

NOTARY PUBLIC, STATE OF N. Y.  
 OFF. #19-6317700  
 MY COMMISSION EXPIRES MARCH 30, 1976

Dated: Dec. 2, 1975

*Paul W. Lattimore*

Mon. Paul W. Lattimore  
Employer Panel Member

Dissenting on Issues No. 1: Wages-Interest Payments  
and No. 4: Pension Plan  
(See Attached Letter)

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

On this *2nd* day of *December*, before me personally came and appeared PAUL W. LATTIMORE to me known and known to me to be the individual described herein and who executed the foregoing instrument and he acknowledged to me that he executed the same.

*Josephine A. Silliman*

JOSEPHINE A. SILLIMAN, 1476  
Notary Public, State of New York  
Qualified in Cayuga County  
My Commission Expires March 30, 1976

Dated: November 14, 1975

*Charles E. Blitman*

Charles Blitman, Esq.  
Employee Panel Member

STATE OF NEW YORK )  
COUNTY OF ONONDAGA ) SS:

On this 14th day of November, before me personally came and appeared CHARLES BLITMAN to me known and known to me to be the individual described herein and who executed the foregoing instrument and he acknowledged to me that he executed the same.

Affirming and dissenting in part. Note my position attached hereto.

*/s/ Dorothy A. Deenan*  
Notary Public

Commission No. 34-6473670  
Qualified in Onondaga County  
My Commission Expires March 30,  
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CITY OF AUBURN

MEMORIAL CITY HALL, AUBURN, NEW YORK 13021, TELEPHONE (315) 252-9531

Office of the Mayor

HONORABLE PAUL W. LATTIMORE

December 2, 1975

Ms. Alice B. Grant  
Arbitrator  
232 Cobb Terrace  
Rochester, New York 14620

Re: Award of Public Arbitration  
Panel - Case No.: CA-0014  
M74-260

Dear Ms. Grant:

I dissent to that part of the award of the Public Arbitration Panel which requires the City of Auburn to provide the firefighters with a 20 year retirement plan (Section 384d) and which requires the City to pay interest of 6% per annum on certain portions of the wage increase awarded to the firefighters.

The neutral panel member states that the length of time in resolution of the contract dispute between the City and firefighters union was caused in major part by the City's obtaining a stay of the arbitration proceedings. She then states that the City bears responsibility of a 10 month delay in resolving the issue from January to November 1975. I believe this ruling is arbitrary, punitive, and without support on the Record. While such an award of interest may be appropriate in certain circumstances which reveal that a party has acted in bad faith or under circumstances which are so unreasonable as to border on bad faith, there is absolutely no evidence on this Record to support a finding that the City of Auburn acted in an unreasonable manner and was responsible for the lengthy delay in the resolution of this proceeding.

The City of Auburn contested in good faith the constitutionality of the amendments to the Civil Service Law which provided for compulsory arbitration of unsettled contract disputes involving police and fire personnel. This was not a

frivolous action by the City, for a Supreme Court Justice in Montgomery County had already declared the amendments to be unconstitutional (City of Amsterdam vs. Robert Helsby, et al.) and the matter was pending review by the New York State Court of Appeals. The City's position did not appear frivolous to the Supreme Court, Cayuga County, for the Union's petition for arbitration was stayed pending the determination on constitutionality by the Court of Appeals. The effect of the neutral arbitrator's award is to punish the City of Auburn for having availed itself of its legal rights in raising a bona fide issue concerning the constitutionality of the arbitration procedure.

Furthermore, the decision is arbitrary in that it places responsibility upon the City of Auburn for the delay, when it is clear from the record that the passage of time subsequent to June 20, 1975 when the Court of Appeals upheld the constitutionality of the Civil Service amendments, was attributable entirely to the normal proceedings of the arbitration panel which in no way may be attributed to the City of Auburn.

I also dissent to the award of a 20 year pension plan to the firefighters, on the ground that such award is neither just nor reasonable based on the record presented to the arbitration panel.

The neutral arbitrator states that "more importantly, the panel found that 6 of the 8 cities (sic) which the panel had determined were comparable to Auburn have the 20 year pension plan". (Op. p. 5-6). The neutral arbitrator's opinion (p.3) states that 9 cities are deemed comparable for salary comparisons, they being: Elmira, Ithaca, Jamestown, Kingston, Lockport, Middletown, Newburgh, Poughkeepsie, and Watertown. In my opinion, the City of Middletown is not comparable to the City of Auburn and I find no basis in or without the record which would support such a finding. Middletown is a community of 23,000 persons and has a part-paid, volunteer fire department comprised of 40 firemen; whereas, Auburn has a population of 35,000 and a fully-paid fire department of 92 firefighters. On the other hand, the City of Auburn submitted a list of 10 cities as being comparable, 8 of which were selected by the

panel majority, as follows:

	<u>Population</u>	<u>Plan 384-d 20-year</u>	<u>Plan 384 25-year</u>
1. Amsterdam	26,000	X	
2. Elmira	40,000		X
3. Ithaca	26,000	X	
4. Jamestown	40,000	X	
5. Kingston	26,000		X
6. Lockport	25,000		X
7. Newburgh	26,000	X	
8. Poughkeepsie	32,000		X
9. Rome	50,000		X
10. Watertown	31,000	X	
<u>Added by Arbitrator:</u>			
Middletown	23,000	X	

The two cities not selected were Amsterdam and Rome, which are upstate New York cities geographically closer to Auburn and which have fully paid fire departments, real estate, and population more comparable to Auburn than does Middletown. All 10 of the cities submitted by the City of Auburn are independent cities outside of standard metropolitan statistical areas. If the cities of Amsterdam and Rome were included for comparison purposes, and Middletown rejected, the comparison would reveal that 5 of those cities have a 20 year retirement plan and the remaining 5 have a 25 year plan as does the City of Auburn. Clearly, there is no support for a finding that the 20 year plan should be awarded based on comparability of benefits in similar communities.

A further basis for my opinion that the award is unreasonable, is the fact that the factfinder had earlier received evidence on this same issue and had recommended against granting the 20 year retirement plan to the firefighters. To my knowledge, no additional evidence was submitted to the arbitration panel which would warrant the panel making an award contrary to the recommendation of the factfinder on this issue. The

factfinder took into consideration a very important factor which the panel majority apparently has refused to consider; mainly, a comparison between the firefighters in the City of Auburn and the policemen in the City of Auburn. The factfinder noted that the policemen had a 25 year retirement plan. He specifically stated that the firefighters had failed to show that the hazards which they encountered in their job were any greater than those encountered by policemen so as to warrant a settlement significantly higher than that agreed to by the Auburn policemen.

The City demonstrated to the panel the history of parity between wages and working conditions in the Auburn Police and Fire Departments since negotiations began in 1968. The police agreed to the 25 year pension plan at a time when they too could have petitioned for arbitration. According to presently enacted State laws, policemen will not be able to negotiate increases to their retirement plan after June 1976. Thus, this award has the effect of destroying the tradition of parity between public safety employees in the City of Auburn, without any reasonable basis having been demonstrated on the record for such a significant departure and disruption to the labor relations between the City and its employees.

The unreasonableness of the award is further demonstrated by the disproportionately great financial impact on the taxpayers of the City of Auburn as compared to the rather insignificant benefit gain to the firefighters. Currently firefighters in the City of Auburn have a 25 year retirement plan which permits a firefighter to retire with a pension equal to 1/2 of his final year salary, after 25 years of service with the City, without regard to any minimum age requirement. Thus, a firefighter who begins his employment at age 22 may retire with a pension equal to 1/2 of his final pay at age 47. There is also currently in effect an option which allows the firefighter to remain on the force beyond retirement age and accrue additional retirement benefits. With the 20 year plan as awarded, the same firefighter could retire with 1/2 pay at age 42. The cost to the City and its taxpayers of permitting a firefighter to retire 5 years earlier than under the present system, would be an additional 16.3% of payroll every year for

those employees hired prior to July 1973. (For example, the additional cost of the 20 year plan to the City for the year 1975-76 would be approximately \$206,000. The record demonstrates, however, that the benefit to the employees would be minor, indeed, for Auburn firefighters simply have not retired when eligible even under the current 25 year plan. Presently there are 18 employees employed in the fire department who have 25 or more years of service and are eligible to retire at a minimum of 1/2 of their final salary, but who have not elected to do so. This clearly indicates that the health hazards from this job are not so serious as to induce employees to retire at an early age, or that for whatever reason, firefighters are not inclined to retire after 25 years of service. Accordingly, it is entirely unreasonable and unjust to force upon the City of Auburn an additional cost of 16.3% of payroll in order to provide an unneeded and unnecessary benefit.

Furthermore, the adoption of the retirement plan will put an additional tax burden upon the taxpayers of the City of Auburn of approximately \$3.10 per \$1,000 of assessed valuation which current costs and appropriation are not included in the 1975-1976 Fiscal Budget and would require the City of Auburn to go out on the bond market to borrow these funds by revenue anticipation notes.

In regard to the award of the Guaranteed Ordinary Death Benefit as provided by Section 360-b, the City of Auburn has been notified by the New York State Policemen's and Firemen's Retirement System that this option is available only to both firefighters and policemen, and not only to firefighters. Therefore, the award by the arbitrator is beyond the jurisdiction of the panel which was originally established for the settlement of the dispute between the City of Auburn and the Auburn Firefighters, and would raise the question of the City of Auburn providing a benefit above and beyond the subjects agreed to for arbitration.

In conclusion, may I reiterate the matter I constantly stressed with the panel members; namely, that the City of Auburn could not afford the 20 year Pension Plan. The Kinzel report clearly stressed that neither the State of New York nor its municipalities could continue the impossible financial

Ms. Alice B. Grant, Arbitrator

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December 2, 1975

burdens of such plans. New York State and all its entities in the State are now in a most critical financial position. How much more evidence does one need to realize such programs no longer can be financed and maintain the fiscal integrity of our communities which is the legal responsibility of the elected officials.

Very truly yours,

A handwritten signature in cursive script that reads "Paul W. Lattimore". The signature is written in dark ink and is positioned above the typed name.

Paul W. Lattimore  
Mayor  
City of Auburn, N.Y.

## ARBITRATOR BLITMAN'S POSITION

Prior to stating my position in this matter, I wish to note that this Public Arbitration Panel's authority and responsibility is derived from Article 14 of the Civil Service Law of the State of New York. Subsequent to a dispute being referred to the Public Arbitration Panel, hearings are mandated on all matters related to the dispute. Evidence may be presented and the Panel shall determine all matters presented to it justly and reasonably by majority vote. The Panel may adopt prior fact finding recommendations but must consider:

- 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. such other factors which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment.

The hearing in this matter is de novo and not in the nature of show cause to prove or establish why the fact finder's report should not be implemented. This Public Arbitration Panel is statutorily bound to bring finality to the collective negotiation process.

The parties presented four issues to the Panel:

1. Wages
2. Cost of living allowance
3. Medical benefits
4. Pension Plan

Award on Issue Number 1 - Wages

Initially it must be noted that the City of Auburn neither contended it had a financial inability to pay the wage proposal of the Association, nor that the interests and welfare of the public required a wage package different from the Association's position. The lack of evidence on the above two considerations places greater emphasis on the following.

I respectfully submit that a comparison to workers with similar skills and qualifications (i) in the localized private and public Auburn labor market; (ii) then to firefighter salaries within the largest two cities of the Syracuse Economic Area as designated by the New York State Department of Commerce; and (iii) finally to statewide comparisons to salaries received by firefighters in cities of comparable size supports the position presented by the Association. Firefighter Exhibit 7

establishes that a wage increase 42.47% would be required in 1975 to achieve equality with hourly salary rates among private non-construction workers and a 61.88% increase in 1975 to achieve parity with the construction sector. Firefighter Exhibit 8 portrays a comparison between Syracuse and Auburn, the two largest population centers located in the New York State Department of Commerce designated Syracuse Economic Area. An increase in 1975 of 34% would be required to reach parity. Firefighter Exhibit 9 sets forth the available data from PERB reports for certain New York cities in the 20,000 to 40,000 population grouping. The data contained in this Exhibit reveal that Auburn Firefighters are being paid at broadly lower salary levels compared to firefighters working in other communities of similar size throughout the state. A firefighter in the City of Auburn is paid on average approximately 22 percent less than other firefighters in comparable cities in the State, even though the population of Auburn is on balance 18 percent greater than the average surveyed city. A salary increase of approximately 35.0 percent would be required before the end of 1975 in order for Auburn Firefighters to establish a salary level comparable with the average New York State population center.

Additional data was presented with respect to increases in salaries of Auburn Firefighters as compared to various industries within the private U. S. economy. Firefighter Exhibit 14, entitled "Comparison of Wage Gains in Various

United States Industries in Relation to Auburn Firefighters", contains information concerning such comparative wage increases. The range of percentage salary increases from 1968 through December, 1974 among Auburn Firefighters was shown to be 32.3 - 44.8 percent depending upon whether the officer or firefighter salary classification was considered. In contrast, salary increases for various other industries had averaged 46.0 - 66.9 percent, and wage increases within private industry were only reflected through the end of 1974. These data reveal that Auburn Firefighters have been unable to realize wage gains similar to those being granted within the private sector. This condition would of course tend to be exacerbated as 1975 salary increases accelerate.

At the same time that the Auburn Firefighters have been falling drastically behind private industry in wage levels, there have been substantial increases in productivity among the firefighters during the period 1971 - 1974. Firefighter Exhibit 17 provides comparative data concerning productivity changes among various U. S. industries. This exhibit clearly reveals that annual output per man per shift among Auburn Firefighters has expanded much more substantially than productivity changes within the private sector.

Firefighter Exhibit 17 also relates to the process through which firefighter productivity has necessarily been expanded during the period 1971 - 1974. Reductions in manpower per shift have gradually occurred during the years

1971 - 1974 because of the overall reduction in hours worked per man from 48 hours to 42 hours per week. Less man hours per shift were available and less manpower was generally available to fight any specific fire. Chief of Fire Maywalt testified under cross-examination that an additional 18 men would have had to be added to the payroll of the Auburn Fire Department in order to maintain overall fire coverage at 1970 levels.

Firefighter Exhibit 17 shows that the City of Auburn had decreased overall fire coverage, decreased the number of men working on any particular shift, increased the coverage area of those fire companies which remain, and in the process has placed a substantial additional work and responsibility burden upon each individual Firefighter within the City. The major increases in productivity by the Auburn Firefighters which were necessary to accomplish this change are obvious. The major savings to the City of Auburn associated with these productivity increases are readily apparent. The City of Auburn may well be one of the only cities in New York State which was able to lower the overall number of firefighting personnel during this period of reduced hours worked per week, as mandated by the State Legislature.

I do not agree with the other two members of this Panel on the comparable cities they selected. Utilizing the data and evidence referred to previously, a just and reasonable wage determination is not 9% increase in each of two years

but rather, as proposed by the Association, 20% across the board increase in each of the next two years. Such is necessary to maintain economic equality for those firefighters, whose profession is commonly accepted as hazardous. I do agree on the 6% interest for ten months although the legal rate of interest in New York State is higher and such higher rate of interest, in my sole view, should be paid from the contract termination to the payment of the increase.

Award on Issue Number 2 - Cost of Living Allowance

I disagree with the other two Panel members on their position relative to the cost of living clause. The evidence clearly demonstrated the short run declines in real purchasing power which can arise in the absence of a cost of living clause. The Auburn firefighter, since mid-1973, has not received any pay increase, except a longevity increase. Since mid-1973, the Consumer Price Index increased from 133.1 to approximately 160.8 at present. This represents an increase of 20.8 percent in prices, whereas Auburn Firefighters have received no wage increases whatsoever during this period of substantial inflation. These data also mean that real purchasing power of Auburn Firefighters has declined by 20 percent during the last two years, such that they can purchase in 1975 approximately only 80 percent of what they could purchase in the year 1973! These statistics support the contention of the Auburn Firefighters that a cost of living escalator clause is definitely needed

in this era of inflation. Further, a cost of living provision would clearly obviate the severe "catch up" problem with which the Firefighters and the City of Auburn must periodically contend.

Award on Issue Number 3 - Medical Benefits

I disagree with the other two Panel members on their position relative to their denial of dental benefits.

Award on Issue Number 4 - Pension Plan

I agree with Panel Member Grant in awarding the 20 year retirement plan (384d) with the addition of the guaranteed ordinary death benefit (360b).

A fully paid plan of retirement after twenty years service is rapidly becoming the standard type of retirement plan offered to firefighters among cities within New York State. Firefighter Exhibit 15, entitled "Survey of Firefighter Retirement Plan Benefits Among Twelve New York State Cities, 1975", provides data concerning type of retirement plan, type of guaranteed death benefit, and population size for the twelve surveyed cities. The average population among the cities surveyed was found to be 36,987. This figure is virtually identical to the population of the City of Auburn. The Arbitration Panel will recall that approximately 73 percent of the surveyed cities offered the twenty year retirement plan to firefighter personnel. In addition, further testimony

revealed that the nearby metropolitan areas of Syracuse and Rochester, which were not included in Exhibit 15, also offered a fully paid twenty year retirement plan to their firefighters.

The additional cost for this twenty year retirement and guaranteed ordinary death benefit must be considered in relation to the major hazards with which firefighters are confronted on a daily basis, and in relation to the quality of service which is expected from the average firefighter. Auburn firefighting personnel should be afforded the opportunity to retire after twenty years service under Section 384d, in view of the substantial health problems which frequently develop after this period of sustained firefighting service to the community. Early retirement can help avoid the types of injuries and health difficulties to which senior firefighting are subjected, at the same time reducing the added costs to the municipality which result from such injuries and disabilities. A twenty year retirement plan would also result in the increased availability to the community of the services of younger firefighters.

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In the Matter of the Compulsory  
Interest Arbitration

between

CITY OF AUBURN

-and-

AUBURN FIRE FIGHTERS ASSOCIATION,  
LOCAL 1446, IAFF

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} MODIFICATION OF  
} ARBITRATION AWARD  
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} Case No. CA-0014  
} M74-260  
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WE, THE UNDERSIGNED PUBLIC ARBITRATION PANEL, having been designated in accordance with the compulsory interest arbitration procedures of the New York State Public Employment Relations Board, Section 209.4 of the Civil Service Law, and having duly heard the proofs and allegations of the Parties, and having rendered an Award dated and signed as follows: November 10, 1975 by the Neutral Chairperson, November 14, 1975 by the Employee Panel Member, and on December 19, 1975 by the Employer Panel Member, and modified by Award dated and signed by the Neutral Chairperson, the Employee Panel Member and the Employer Panel Member on January 21, 1976, and now upon the request of both parties, submitted pursuant to CPLR 7509, we hereby further modify the Award as follows:

TERMS OF MODIFIED ARBITRATION AWARD

1. Issue No. 4 - "Pension Plan".

The award as modified by the panel on January 21, 1976 shall be further modified to delete and nullify the requirement that as of January 1, 1976 the City shall provide the Firefighters the 20 year retirement plan (Section 384d). That portion of the amended award requiring the City to provide as of January 1, 1976 the Section 360-b death benefit or the cash equivalent of its cost shall remain in effect.

2. Issue No. 1 - "Wages".

The wage award, as modified on January 21, 1976, shall be further modified by requiring the City to increase each step of the salary schedule by \$700 effective January 1, 1976. Thus the total wage award shall be (1) a 9% across-the-board increase for the period July 1, 1974 to June 30, 1975; (2) a 9% across-the-board increase for the contract year beginning July 1, 1975; (3) a \$700 increase to each level of the salary schedule effective January 1, 1976; and (4) interest at the rate of 3% per annum on the last 5 months of the first year's increase and the first 5 months of the second year's increase, to be paid to each firefighter on the payroll during that period.

3. Issue No. 2 - "Cost of Living Allowance".

The City shall implement a cost of living allowance according to the following terms:

### Cost of Living Allowance

1. Each employee covered by this agreement shall receive a cost of living allowance to the extent such allowance becomes payable under and in accordance with all of the terms, definitions and limitations set forth in this agreement.

2. Payment of allowance; effect on other payments.

The cost of living allowance shall not be added to the salary schedule, but only to the employees' straight time hourly earnings. The allowance shall not be included in computing compensation for paid absences under this agreement. (For purposes of computation and payment on a regular payroll basis, employees shall be considered to work a 40 hour per week schedule.)

3. Basis for allowance.

The amount for the cost of living allowance shall be determined as provided below on the basis of the Consumer Price Index for Urban Wage Earners published by the Bureau of Labor Statistics, United States Department of Labor (1967 = 100 New Series), hereinafter referred to as the "Index".

4. Continuance of the cost of living allowance shall be contingent upon the availability of the Index in its present form and calculated on the same basis as the Index for December 1975, unless otherwise agreed upon by the parties. In the event the Index is discontinued or revised, the parties shall meet and negotiate upon an appropriate substitute.

5. Determinations and adjustments.

The base Index for the purpose of computation of the cost of living allowance shall be the All Cities - All Items figure for December 1975 (166.3 = 0).

The first cost of living adjustment shall be implemented in the first pay period of August 1976 for hours worked beginning August 1, 1976, and shall be based upon the six month average of the Indexes for the months of January through June 1976. In determining the six month average of the Index for the specified period, the computed average shall be rounded to the nearest 0.1 Index point.

No adjustments retroactive or otherwise will be made in the amount of the cost of living allowance due to any revisions which later may be made in published figures for the Index for any months on the basis of which the adjustments shall have been determined.

6. Amount of allowance.

The cost of living allowance shall increase one cent (\$.01) per hour semi-annually for each one-half (0.5) point increase in the six (6) month Index average commencing with January 1976. There shall be a ten cent (\$.10) per hour limit on the cost of living allowance for each six month period.

7. In all other respects our Award as modified on January 21, 1976, shall remain in full force and effect.

Dated: 2/23/76

Alice B. Grant  
Alice B. Grant  
Neutral Chairperson

STATE OF NEW YORK )  
COUNTY OF MONROE ) ss.:

On this 23 day of FEB 1976, before me personally came and appeared ALICE B. GRANT, to me known and known to me to be the individual described herein and who executed the foregoing instrument and she acknowledged to me that she executed the same.

Paul E. Blitt  
Notary Public

NOTARY PUBLIC  
MONROE COUNTY, N.Y.  
Commission Expires March 30, 1977

Dated: 2/19/76

Charles E. Blittman  
Charles E. Blittman, Esq.  
Employee Panel Member

STATE OF NEW YORK )  
COUNTY OF Oran ) ss.:

On this 19<sup>th</sup> day of February, before me personally came and appeared CHARLES E. BLITMAN to me known and known to me to be the individual described herein and who executed the foregoing instrument and he acknowledged to me that he executed the same.

Dorothy G. Duncan  
Notary Public  
Qualified in Oran Co., N. Y.  
My Commission No. 34-6473670  
My Commission Expires March 30, 1976

Dated: 2/24/76

*Paul W. Lattimore*

Hon. Paul W. Lattimore  
Employer Panel Member

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

On this 24th day of February, before me personally came and appeared PAUL W. LATTIMORE/ to me known and known to me to be the individual described herein and who executed the foregoing instrument and he acknowledged to me that he executed the same.

*Josephine A. Silliman*  
Notary Public

JOSEPHINE A. SILLIMAN, 1476  
Notary Public, State of New York  
Qualified in Cayuga County  
My Commission Expires March 30, 1978

In the Matter of the Compulsory  
Interest Arbitration

between

CITY OF AUBURN

-and-

AUBURN FIRE FIGHTERS ASSOCIATION,  
LOCAL 1446, IAFF

OPINION OF THE NEUTRAL CHAIRPERSON  
IN REPLY TO THE APPLICATION FOR  
MODIFICATION OF AWARD

CASE No. CA-0014  
M74-260

RECEIVED  
JAN 22 1976  
CONCILIATION

On January 2, 1976, Mr. Bruce L. Clifford, City Manager of Auburn, New York, filed an Application for modification of the Award and on January 8, 1976, Mr. Jules L. Smith, for Blitman and King, filed an Affidavit in Opposition to the Application for Modification of Award. The Panel met to consider this application on January 14, 1976, and on January 21, 1976.

The following is the Opinion of the Neutral Chairperson in response to the City's Application.

1. Wages - interest at 6%.

The City contends that the payment of 6% interest is prohibited by the General Municipal Law. The Neutral Chairperson considered this amount of interest to be compensatory to the Fire Fighters rather than punitive to the City, and, therefore, the award of interest was a part of a just and reasonable settlement. However, in an effort to avoid any possible legal obstacle to its enforcement, we will modify the Award to conform with the 3% interest permitted by Section 3-a of the General Municipal Law.

Since the payment of this interest is to compensate in small part for the many months (over a year and one half) during which the Fire Fighters have received no increase in wages, the Panel reaffirms its

award that this compensation is to be paid for a period of ten months.

2. No modification requested.
3. No modification requested.
4. Pension Plan

The City contends that "a miscalculation is felt dealing with the survey cities used, the cost to the city, the city's ability to pay, and the PERB studies used".

The panel gave lengthy consideration to selecting cities comparable to Auburn. The Employee Panel Member contended that comparable population should be the main determinant in selecting the cities. The Neutral Chairperson and the Employer Panel Member, however, determined that cities with comparable populations such as Tonawanda, North Tonawanda, Lackawanna, Port Chester, and Eastchester were contiguous to the two largest cities in the State and were affected by this proximity. Although the Fire Fighters contended that Auburn is closely related to Syracuse in job market comparisons, the majority panel members determined that Auburn is a separate city and compared more closely with other cities which are separated from large metropolitan areas. The Employer Representative and the Neutral Chairperson agreed on the selection of Elmira, Ithaca, Jamestown, Kingston, Lockport, Newburgh, Poughkeepsie, and Watertown. The three panel members agreed to the exclusion of Amsterdam since its settlement with the Fire Fighters was not known at that time (since this Award was issued, Amsterdam Fire Fighters were awarded the 20 year pension plan). The City of Rome was excluded since its population is over 50,000 and the other cities selected ranged in population from approximately 22,000 to 39,000. Although the Employer Panel member protested the inclusion of Middletown, the Neutral Chairperson and the Employee Representative agreed to its inclusion based on its population and the fact that it is further from New York City than is Newburgh (information

based on mileage supplied by the Rochester Public Library. Middletown is approximately 65 miles from New York City and Newburgh approximately 45 miles).

After the Panel finally decided on the nine comparable cities, it then asked the Research Department of the Public Employment Relations Board to supply information about the retirement plans provided by those cities. The first information we received indicated that six of the nine cities provided the 20 year pension plan, but we later learned that the City of Poughkeepsie provides this plan only for its policemen and not for its firemen. Even with this correction, a majority of the cities which are comparable to Auburn, provide the 20 year pension plan to their firemen.

The Panel then examined the issues in relation to the other criteria set forth under the Taylor Act. The working conditions of Fire Fighters are unique in relation to health hazards and these have been well documented. The inauguration of a 20 year retirement plan in New York State is a response both to these health hazards and to the interests and welfare of the public which require a Fire Fighter force with the physical capability to handle fires effectively. By making it possible to retire after 20 years, it is assumed that the public will benefit both by having a younger and, therefore, more physically capable work force, and also by a reduction in costs resulting from disabilities caused by continued exposure to the hazards of the job.

The Panel also gave full consideration to the Fact Finder's report. In determining the amount of increases in wages, the Panel found that the Fact Finder's recommendation was supported by the pattern of wage settlements which had been reached in the comparable cities. In turning to the Fact Finder's recommendation denying the 20 year retirement plan, however, it must be noted that the Fact Finder's report was issued on October 4, 1974,

a full year before this Panel was making its determination, and that, furthermore, the Fact Finder did not provide specific reference to the criteria he used, other than cost, to reach his conclusion. The Panel, therefore, gave the Fact Finder's report less weight in considering this issue than it gave to the other criteria.

In her Opinion of November 10, 1975, the Neutral Chairperson made particular reference to the fact that the costs of the 20 year pension plan will "create a burden for the City", but that there is no evidence that the City of Auburn has less financial ability to pay than the other comparable cities which provide for this pension (p.6). In fact, the Neutral Chairperson also noted that "Auburn has an increasing financial base because of the establishment of new industry and the expansion of one of its existing plants" (p.4).

The Panel also awarded the adoption of the guaranteed ordinary death benefit as provided by Section 360b. Although the City now contends that the Panel never calculated the cost of this benefit, I note that both the Fact Finder's report and the City's own brief to the Panel state the cost as one tenth of one percent, which can certainly be considered minimal.

The Panel, however, takes into consideration the City's belated objection that this benefit must by law also be granted to another bargaining unit. The Panel, therefore, finds that the City shall provide either the Section 360b death benefit or the cash equivalent thereof.

Dated:

Jan. 21, 1976

Signed:

Alice B. Grant

Alice B. Grant

WE, THE UNDERSIGNED PUBLIC ARBITRATION PANEL, having been designated in accordance with the compulsory interest arbitration procedures of the New York State Public Employment Relations Board, Section 209.4 of the Civil Service Law, and having duly heard the proofs and allegations of the Parties, and having made an Award dated and signed as follows: November 10, 1975 by the Neutral Chairperson, November 14, 1975 by the Employee Panel Member, and on December 19, 1975 by the Employer Panel Member, and upon written request of the City of Auburn, by Bruce L. Clifford, City Manager, dated January 2, 1976, submitted pursuant to CPLR 7505, we hereby modify the Award as follows:

1. There is a factual error in the Opinion of the Neutral Chairperson on the bottom of page 5 and again on page 6. This error does not affect the substance of the Award, but these sentences should be corrected to read as follows:

'More importantly, the Panel found that five of the nine cities which the Panel had determined were comparable to Auburn have the 20 year pension plan. Although the costs of this plan will create a burden for the City, there is no evidence that the City of Auburn has less financial ability to pay than the other five cities which presently provide for this pension.'

2. The Panel will reduce the rate of interest on the wage increase from 6% to 3%.
3. The City shall provide the guaranteed death benefit, Section 380-b, or the cash equivalent thereof.
4. In all other respects our Award shall remain in full force and effect.

*Alice B. Grant*

Alice B. Grant, Neutral Chairperson

*Paul W. Lattimore as stated above*  
*Disenting on Items 2 + 4*  
 Hon. Paul W. Lattimore, Employer Panel Member

*Charles Blitman - I concur*  
 Charles Blitman, Esq. Employee Panel Member

*completely on all points in the original Award and its modification herein.*

STATE OF NEW YORK )  
 COUNTY OF MONROE ) ss.

On this 21st day of January, before me personally came and appeared ALICE B. GRANT, HON. PAUL W. LATTIMORE, and CHARLES BLITMAN, Esq., to me known and known to me to be the individuals described herein and who executed the foregoing instrument and they acknowledged to me that they executed the same.

*January 21, 1976*

*Lillian E. Moore, Notary Public*  
*Town of Paris March 1977.*