

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Arbitration

PERB Case No.
1A-34, M77-634

- between -

CITY OF MOUNT VERNON,

- and -

UNIFORMED FIRE FIGHTERS ASSOCIATION,
INC., (DEPUTY CHIEFS)

NY S. PUBLIC EMPLOYMENT
RELATIONS BOARD
RECEIVED
AUG 9 1979

CONCILIATION

OPINION AND AWARD OF PUBLIC ARBITRATION PANEL

Members of Public
Arbitration Panel:

THOMAS FLYNN, Employee Member

TERENCE M. O'NEIL, ESQ., Employer
Member

THOMAS J. NEWMAN, ESQ., Chairman

Appearances:

RAINS, FOGREBIN & SCHER, ESQS.

BRUCE MILLMAN, ESQ., of Counsel for
City of Mount Vernon

EDWARD J. BRUNO for the Uniformed Fire
Fighters Association, Inc. (Deputy Chiefs)

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Arbitration

- between -

CITY OF MOUNT VERNON

OPINION

- and -

UNIFORMED FIRE FIGHTERS ASSOCIATION, INC.
(DEPUTY CHIEFS)

PRELIMINARY STATEMENT

Pursuant to the provisions of the Civil Service Law §209.4, Harold R. Newman, Chairman of the Public Employment Relations Board, on December 13, 1978, designated the following individuals to serve as a Public Arbitration Panel for the purpose of making a just and reasonable determination on the matters in dispute.

Thomas Flynn, Employee Panel Member

Terence M. O'Neil, Esq., Employer Panel Member

Thomas J. Newman, Esq., Public Panel Member and
Chairman.

In this arbitration proceeding the Panel, in arriving at its determination and award, took into consideration the relevant factors

developed by the parties including:

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

Hearings were held in the City of Mount Vernon on February 14, 1979, and on February 28, 1979. At these hearings the parties were afforded full opportunity to present oral and written evidence, cross examine witnesses and present arguments in support of their respective contentions. At the close of the hearings the parties agreed to a time

schedule for an exchange of briefs. By letter dated March 13, 1979, the City advised that it would not file a brief. The Union's brief was received by the Chairman on March 21, 1979. As a result of the efforts and cooperation of the parties, certain proposals were withdrawn and/or agreed upon during the arbitration hearings and no award will be made thereon. The only proposals which are the subject of this award relate to salary and overtime. The Panel met in executive session and deliberated on these open issues.

The parties agreed that the duration of the collective bargaining agreement shall be for a two (2) year term commencing as of July 1, 1977 and expiring on June 30, 1979, and this opinion and award is based on the same.

OVERTIME

The Union's proposal seeks to have the deputy chiefs paid at the rate of time and one-half for all hours worked beyond the regular tour as authorized by the Commissioner or his designee. The proposal goes on to request that overtime shall be paid when a deputy chief has accumulated one (1) hour or more of overtime or fifteen (15) days following the close of the fiscal year for those who have accumulated less than one (1) hours in the prior fiscal year, whichever occurs first.

The City opposes the Union's proposal to have the deputy chiefs paid at the rate of time and one-half for overtime.

Considering the evidence submitted on this issue, the Panel recommends that deputy chiefs be compensated for overtime worked beyond their regular tour as authorized by the Commissioner or his designee with equivalent time off.

SALARY

The Union proposes that its salary be thirty (30%) percent above the salary of fire captain during the period of this contract. In support of its position it refers to a long standing relationship that existed wherein the above differential was maintained. The Union notes that the deputy chiefs have not received a raise since July 1, 1975. In support of its position testimony was introduced that indicated that the then Mayor, August Petrillo, requested that the thirty (30%) percent differential be reduced to twenty-seven (27%) percent because the chiefs' salary was approaching that of the Mayor, with the understanding that when the Mayor received a raise, the traditional relationship of thirty (30%) percent above fire captain would be restored. The testimony went on to indicate that the present Mayor, Thomas E. Sharp, did not continue what the Union considered was the informal agreement reached with the now deceased Mayor Petrillo. The Union states that the City insisted that the deputy

chiefs were not certified or recognized and had no right to bargain for themselves. The argument is made that the deputy chiefs could have received recognition effective January 1, 1976, if they knew that the traditional relationship would not continue on an informal basis. Claim is made that the unit members lost or will lose over \$10,000 a man, cash in pocket, from January 1, 1976 through June 30, 1979, over what would have been given had the traditional relationship been maintained even if the firefighters received no raises for 1978 and 1979. If the firefighters received raises for 1978 and 1979, the amount lost would be greater.

The Union has offered evidence which it claims demonstrates that the City has the ability to pay the relatively few number of men in this bargaining unit the amount of money necessary to restore what it calls the traditional relationship. It further argues that no justification has been shown by the City for the reduction in the traditional mathematical relationship which existed between the deputy chiefs and fire captains, and the de facto relationship with other ranks in the fire departments, as well as other employees of the City of Mount Vernon. The Union states that because the Mayor was a police captain and PBA negotiator, this is not sufficient justification to cause a salary freeze for two and one-half (2 1/2) years and a substantial reduction in the pension of those deputy chiefs who have retired or who plan to retire. Evidence is also submitted by the Union concerning the work load of the deputy chiefs, including the duties, area and number of alarms.

The City on the other hand disputes the fact that the deputy chiefs are entitled to a raise of thirty (30%) percent above fire captains. To support its position the City offers evidence of comparability. It argues that the arbitrators should pay particular attention to the salaries of the deputy chiefs in White Plains and New Rochelle.

In this connection its evidence shows the following:

<u>Place</u>	<u>Date</u>	<u>Salary</u>	<u>Percentage above & rank</u>
Mount Vernon	1/1/77	24,835	15% above Lt. plus 13.46%
New Rochelle	1/1/77	24,775	15% above Lt. plus 16%
"	7/1/77	25,766	15% above Lt. plus 17%
White Plains	7/1/76	24,470	15% above Lt. plus 15%
"	7/1/77	25,870	15% above Lt. plus 15%

The City also offered evidence on the issue of ability to pay.

After reviewing all the evidence submitted on the salary issue, I am of the opinion that the salaries for the unit members should be as follows:

Effective July 1, 1977, \$26,485 annual salary;

Effective January 1, 1978, the annual salary of a unit member shall be twenty-one (21%) percent above that of a Mount Vernon fire captain;

Effective January 1, 1979, the annual salary of a unit member shall be seventeen (17%) percent above that of a Mount Vernon fire captain.

At no time during the term of this agreement shall the salary of any unit member be reduced.

The City can afford the above increase. Ability to pay, however, does not warrant or justify an increase without consideration of the other relevant factors mandated to be considered in arriving at an award on salary. In this connection consideration must be given to a comparison of the salaries of the deputy chiefs in Mount Vernon with those in the cities of White Plains and New Rochelle. When this comparison is made, the award in my opinion is fair, equitable, justified and warranted by the evidence.

Dated: May 17, 1979



THOMAS J. NEWMAN
Public Panel Member & Chairman

AWARD

TERM OF AGREEMENT

The duration of the collective bargaining agreement shall be for a two (2) year term commencing as of July 1, 1977 and expiring on June 30, 1979.

OVERTIME

That the deputy chiefs be compensated for overtime worked beyond their regular tour as authorized by the Commissioner or his designee with equivalent time off.

SALARY

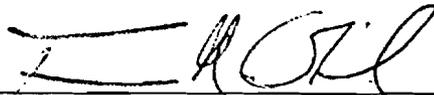
That the salaries for the unit members shall be as follows:

Effective July 1, 1977, \$26,484 annual salary;

Effective January 1, 1978, the annual salary of a unit member shall be twenty-one (21%) percent above that of a Mount Vernon fire captain;

Effective January 1, 1979, the salary of a unit member shall be seventeen (17%) percent above that of a Mount Vernon fire captain. At no time during the term of this agreement shall the salary of any unit member be reduced as a result of the above award.

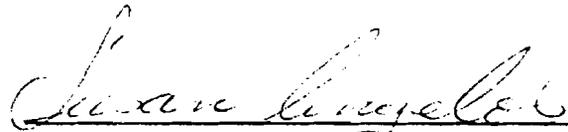

THOMAS FLYNN
Employee Panel Member
NON-CONCURRING


TERENCE O'NEIL, ESQ.
Employer Panel Member


THOMAS J. NEWMAN
Public Panel Member & Chairman

STATE OF NEW YORK)
) SS.:
COUNTY OF *NASSAU*)

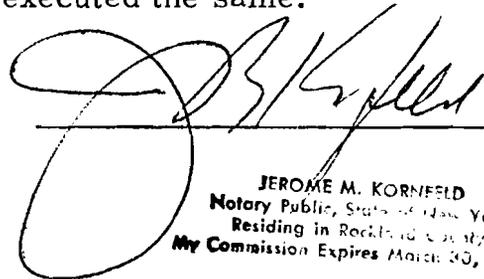
On this *29* day of *MAY*, 1979, before me personally came and appeared **TERENCE O'NEIL** to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to be that he executed the same.



SUSAN ANGELOS
NOTARY PUBLIC, State of New York
No. 30-4503977
Qualified in Nassau County
Commission Expires March 30, 1981

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

On this *3* day of *August*, 1979, before me personally came and appeared **THOMAS J. NEWMAN** to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.



JEROME M. KORNFELD
Notary Public, State of New York
Residing in Rockland County
My Commission Expires March 30, 1980

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

On this *24th* day of *JULY*, 1979, before me personally came and appeared THOMAS FLYNN to me known and known to me to be ther individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

Henry Longo

HENRY LONGO
NOTARY PUBLIC, State of New York
#60-7592815
Qualified in Westchester County
Term Expires March 30, 19*80*