

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

TA-56

PERB Case No. M78-8

In the Matter of the Arbitration

- between -

CITY OF WHITE PLAINS

- and -

PROFESSIONAL FIRE FIGHTERS ASSOCIATION,
LOCAL 274, I.A.F.F.

CONCILIATION

OPINION AND AWARD OF PUBLIC ARBITRATION PANEL

Members of Public
Arbitration Panel:

THOMAS FLYNN, Employee Member

BERTRAND POGREBIN, ESQ., Employer
Member

THOMAS J. NEWMAN, ESQ., Chairman

Appearances:

RAINS, POGREBIN & SCHIER, ESQS.
TERRENCE M. O'NEILL, ESQ. of
Counsel for City of White Plains

BELSON, CONNOLLY & BELSON, ESQS.
JOHN J. CONNOLLY, ESQ. of Counsel
for Professional Fire Fighters
Association

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Arbitration

- between -

CITY OF WHITE PLAINS

OPINION

- and -

PROFESSIONAL FIRE FIGHTERS ASSOCIATION,
LOCAL 274, I. A. F. F.

PRELIMINARY STATEMENT

Pursuant to the provisions of the Civil Service Law §209.4, Harold R. Newman, Chairman of the Public Employment Relations Board, on July 28, 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.

Bertrand P. Pogrebin, Esq., Employer Panel Member

Thomas Flynn, Employee 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 White Plains on October 4, 1978, October 27, 1978, November 27, 1978, December 1, 1978 and December 12, 1978. 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. The Panel met in executive session and deliberated on the open issues.

Certain proposals were withdrawn prior to or during the arbitration hearings. Accordingly, no award will be made on those proposals. The proposals withdrawn were City Proposals Nos. 1, 3, 8 and 11 and Union Proposals Nos. 4, 10, 13, 14, 17, 19 and 23.

WAGES

Each side submitted substantial evidence in support of their respective positions on this issue.

The firefighters offered evidence on the City's ability to pay, including the testimony of Edward J. Fennell, a fiscal consultant. It also produced evidence showing the renewal projects either completed or underway, the projected revenues from said projects, as well as evidence on the tax structures in comparable Westchester communities, and a review of the tax imposed in White Plains.

The City on the other hand offered evidence to indicate that the financial picture isn't as rosy as the firefighters evidence would seem to indicate.

After reviewing all the evidence on the issue of ability to pay, the Chairman concludes that there is room to finance the increases awarded by the Panel. It should be noted that ability to pay is only one factor to be considered among others. The fact that the City has the ability

to pay would not be reason to recommend increases not otherwise warranted or justified. The parties had a difference of opinion concerning the proper standards of comparison between this unit and others in Westchester. The City argued that the standards of comparison should be with the cities of Mount Vernon and White Plains, while the firefighters state that the standard of comparison should be between all units in Westchester, including a number of smaller communities, as well as the City of Yonkers. It is the Chairman's opinion that the most appropriate comparisons should be with cities of Mount Vernon and New Rochelle; however, the contiguous towns and villages, as well as the city of Yonkers, cannot be overlooked completely. The Panel also considered the increases in the cost of living, the private and quasi public sector settlements and the settlements or recommendations with the City for other units as the same was developed by the evidence submitted by the parties and concludes that the salaries for unit members shall be adjusted as follows: effective July 1, 1978, an increase of 5.5% plus increment and effective July 1, 1979, an increase of 5.5% plus increment. It also finds that there should be no change in the present salary differential of 15% paid to lieutenants over the salary of top paid firefighters.

HOLIDAY AND PERSONAL DAYS

Both personal leave and holidays are economic items. The evidence submitted by the parties in support of their respective proposals

and duty requirements. The evidence does not warrant the granting of a night differential. Accordingly, it is not awarded.

UNIFORM MAINTENANCE ALLOWANCE

The Union requests a payment of \$250 for cleaning and maintenance of clothing and protective garments. In support of its position it offers evidence that the cities of Yonkers, New Rochelle and Mount Vernon provide such allowance. It also indicates that the firefighters are required to have black shoes, shirts and socks which the individual must now supply.

The City in opposition claims that the cleaning and maintenance is a proper expense of the employee. The City now supplies all outer-garments, an issue of dress blues, work clothes and fire fighting equipment and replaces the same.

Considering the evidence submitted on this issue, the Panel recommends that the Union's proposal be denied.

LONGEVITY

Each party had a proposal on this issue. The City wanted to convert the present longevity payment, which is expressed in a percentage, to a flat dollar amount. The Union on the other hand wanted to increase the present longevity payment from 1% after five (5) years to 3%, after ten (10) years from 2% to 4%, after fifteen (15) years from 3% to 5% and to add after

nineteen (19) years 7%. The Union's evidence shows municipalities that pay percentage longevity payments. It is noted that Mount Vernon and New Rochelle do not. On the other hand, the parties did negotiate the present longevity benefits and the evidence submitted does not warrant any change. Accordingly, both requests are denied.

OUT OF TITLE

The Union proposes to have any member who assumes the responsibility of a higher rank for a period exceeding two hours, be compensated for the time that he worked in that position, including the first two hours on a per diem basis, which shall reflect the difference between his regular salary and the salary which he would receive if promoted to the higher title. It is the Union's position that a firefighter assumes the duties of a higher rank whenever his company has no officer. It states that someone is always in charge of a company and must make decisions.

The City states that Civil Service Law prohibits out of title work and the firefighters have a remedy under the Law if they are required to work out of title.

Based on the evidence submitted by both parties on this issue, including the testimony of Chief James Neilon, it is the Chairman's opinion that the Union's proposal for out of title pay be denied.

CONTINUATION OF FIRE DEPARTMENT
POLICY RE TEMPERATURE GUIDELINES

Each party has a proposal on this issue. The Union seeks to have the present guidelines continued without change. At present all training ground activities and inspections (field work) are discontinued in inclement weather or when the temperature reaches 90° or descends to 35°.

The City seeks to change the 35° guideline to 30°. The evidence submitted on this issue justifies the granting of the City's proposal.

DENTAL FUND and HEALTH INSURANCE
PREMIUMS TO BE CONVERTED TO FLAT
DOLLAR AMOUNT

The Union proposes that the full cost of the dental program be paid by the City both for individuals and families. The City on the other hand proposes that all health insurance premiums be converted to the flat present dollar amount with the firefighters paying any difference.

After a review of the evidence submitted on this issue by both parties, including other dental plans, it is recommended that the City's proposal to convert health insurance premiums to a flat dollar amount be denied and that the Union's proposal to have the City pay the full cost of the dental plan be denied.

The Panel is of the opinion that for the year commencing July 1, 1978, that the City shall pay \$160 a year for a dependent dental plan

and the sum of \$110 a year for an individual plan; that effective July 1, 1979 a dental trust fund be established and that the City make a contribution of \$160 per year per person to said fund.

WELFARE FUND, CHANGE IN ARTICLE XXIII
OF PRESENT CONTRACT, RELEASE TIME FOR
ASSOCIATION BUSINESS, SEVERANCE PAY,
COMPENSATION FOR EXTRA FIRE DEPARTMENT
TRAINING, OVERTIME and HAZARDOUS DUTY PAY

Considering the evidence submitted on the above Union proposals, there appears to be no compelling reason to grant the same nor does the evidence warrant the granting of the same. Accordingly, they are denied.

SALARY SCHEDULE: CURRENT STEP ONE FROZEN
FOR TWO YEARS. SALARY INCREASE OF TOP AND
RECALCULATE STEPS; SWAPPING OF TOURS TO
BE LIMITED TO EIGHT (8) PER YEAR and REMOVE
ARTICLE L, "RIGHTS AND BENEFITS."

Considering the evidence submitted on the above City proposals, there appears to be no compelling reason to grant the same nor does the evidence warrant the granting of the same. Accordingly, they are denied.

GENERAL HEALTH AND SAFETY COMMITTEE

The Union proposes the creation of a General Health and Safety Committee. The City contends that this proposal was not a mandatory subject of negotiation. During the course of the arbitration hearings the Public Employment Relations Board made a determination favorable to the Union's position and the City indicated that it intended to or in fact had appealed PERB's ruling. The Panel will retain jurisdiction. At this time no award is made in connection with the Union's proposal.

CONTRACT REPRODUCTION

The Union proposes that the entire cost of printing and distribution of the contract between the parties shall be paid by the City. At the present time the parties split the cost. The City argues that there is no reason to change this arrangement. In support of its proposal the firefighters state that the City provides a book of rules which is paid for by the City.

The evidence at the hearing does not justify a change in the present arrangement. Accordingly, the Union's proposal is denied.

CLARIFY COMPENSATORY TIME OFF

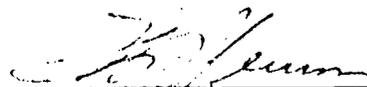
The City seeks to clarify compensatory time off. The present and the proposed schedule are set forth in City exhibit "57". It argues that a forty-two hour work week is built into the system and that firefighters now have compensatory time off in what it calls "mini vacations."

The firefighters on the other hand state that the present schedule was created by the City and there is no reason to change the same. The City counters by claiming that extra compensatory time was as a result of error and should be corrected.

Considering all of the evidence presented by the parties on this issue, the City's request for clarification of compensatory time by changing the present schedule to that proposed in City exhibit "57" is denied.

Based upon the various statutory guidelines which the Panel was charged to consider, it is my opinion that the award of the Panel was just, fair, equitable and warranted by the evidence presented.

Dated: February 28, 1979



THOMAS J. NEWMAN
Public Panel Member and Chairman

AWARD

UNION PROPOSAL NO. 1
TERM OF AGREEMENT

The duration of the Collective Bargaining Agreement shall be for a two (2) year term commencing as of July 1, 1978 and expiring on June 30, 1980.

UNION PROPOSAL NO. 2
WAGES

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

- (a) Effective July 1, 1978, an increase of 5.5% plus increment
- (b) Effective July 1, 1979, an increase of 5.5% plus increment
- (c) That the Lieutenants request that their present salary differential of 15% over the salary of the top paid fire-fighters be increased to 22%

is denied.

UNION PROPOSAL NO. 3
HOLIDAY AND PERSONAL DAYS

- and -

CITY PROPOSAL NO. 2
PERSONAL DAYS

The Union and City's request on the above proposals are denied.

UNION PROPOSAL NO. 5
EDUCATION

The Union's request is denied.

UNION PROPOSAL NO. 6
NIGHT DIFFERENTIAL

The Union's request for a ten (10%) percent night differential is denied.

UNION PROPOSAL NO. 7
UNIFORM MAINTENANCE ALLOWANCE

The Union's proposal that each member shall receive an annual payment of \$250.00 for cleaning and maintenance of issued equipment and clothing is denied.

UNION PROPOSAL NO. 8
WELFARE FUND

The Union's proposal for a welfare fund is denied.

UNION PROPOSAL NO. 9
LONGEVITY

- and -

CITY PROPOSAL NO. 4
CONVERT LONGEVITY TO FLAT AMOUNT

The Union's request is denied as is the City's request to change the present longevity payment to a flat dollar amount.

UNION PROPOSAL NO. 11
CHANGE IN LANGUAGE OF ARTICLE XXIII
OF PRESENT CONTRACT BY DELETING THE
WORD FORMAL FROM LINES 3 & 4 OF §G

The Union's proposal is denied.

UNION PROPOSAL NO. 12
RELEASE TIME FOR ASSOCIATION BUSINESS

The Union's proposal to increase by five working shifts the amount of time off to attend Association business is denied.

UNION PROPOSAL NO. 15
CONTRACT REPRODUCTION

The Union's proposal to have the City pay the full cost of reproducing the collective bargaining agreement is denied.

UNION PROPOSAL NO. 16
OUT OF TITLE

The Union's proposal is denied.

UNION PROPOSAL NO. 18
SEVERANCE PAY

The Union's proposal for severance pay is denied.

UNION PROPOSAL NO. 20
CONTINUANCE OF LETTER OF FIRE
DEPARTMENT POLICY

- and -

CITY PROPOSAL NO. 10
CHANGE TEMPERATURE GUIDELINES

The Union's proposal for a continuation of the present temperature guidelines is denied and the City's request to change temperature guidelines is granted. The temperature guidelines will be 90° - 30°.

UNION PROPOSAL NO. 21
GENERAL HEALTH AND SAFETY COMMITTEE

The Panel will retain jurisdiction on the Union's proposal for the creation of a General Health and Safety Committee.

UNION PROPOSAL NO. 22
DENTAL PLAN

The Union's proposal to have the City pay the full cost of a dental plan is denied. However, the Union shall set up a dental trust fund. Effective July 1, 1979, the City shall make a contribution of \$160 per person to said fund. For the year commencing July 1, 1978, the City shall

I dissent from the Award insofar as it denied Union proposals numbered 2, 5, 6, 7, 8, 11, 12, 16, 18, 21, 25, 26 and 27.



THOMAS FLYNN
Employee Panel Member

I dissent from the award insofar as it denied the city proposals # 4, 5, 6 and # 7, I agree in all other respects



BERTRAND POGREBIN
Employer Panel Member

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

On this 9th day of April, 1979 before me personally came and appeared THOMAS FLYNN 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.



MARGE SMOLLEY
Notary Public, State of New York
No. 4625722
Residing in Rockland County
Term Expires March 30, 1980

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

On this *21st* day of *March*, 1979, before me personally came and appeared BERTRAND POGREBIN 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.

Bessie Kamen
BESSIE KAMEN
NOTARY PUBLIC, STATE OF NEW YORK
No. 402415000
Qualified in Nassau County
Commission Expires March 30, 1980

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

On this *6th* day of *March*, 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.

[Signature]
THOMAS J. NEWMAN
NOTARY PUBLIC, STATE OF NEW YORK
No. 54407223
Qualified in Rockland County
Commission Expires March 30, 1980

pay \$160 per year for a dependent dental plan and \$110 per year for an individual plan.

UNION PROPOSAL NO. 25
COMPENSATION FOR EXTRA FIRE
DEPARTMENT TRAINING ACTIVITIES

The Union's request is denied.

UNION PROPOSAL NO. 26
OVERTIME

The Union's proposal is denied.

UNION PROPOSAL NO. 27
HAZARDOUS DUTY PAY

The Union's proposal is denied.

CITY PROPOSAL NO. 5
SALARY SCHEDULE

Current step 1 frozen for two (2) years. Salary increase of top and recalculate steps is denied.

CITY PROPOSAL NO. 6
SWAPPING OF TOURS TO BE
LIMITED TO EIGHT PER YEAR

The City's proposal is denied.

CITY PROPOSAL NO. 7
HEALTH INSURANCE PREMIUM TO
BE CONVERTED TO FLAT DOLLAR
AMOUNT, FIRE FIGHTERS TO PAY
DIFFERENCE.

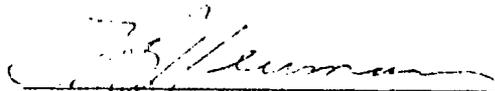
The City's proposal is denied.

CITY PROPOSAL NO. 9
CLARIFY COMPENSATORY TIME OFF

The City's proposal is denied.

CITY PROPOSAL NO. 12
REMOVE ARTICLE L, RIGHTS AND BENEFITS

The City's proposal is denied.



THOMAS J. NEWMAN
Public Panel Member and Chairman

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Arbitration

IA-56

- between -

CITY OF WHITE PLAINS

OPINION

- and -

PROFESSIONAL FIRE FIGHTERS ASSOCIATION,
LOCAL 274, I.A.F.F.

STATEMENT

Pursuant to the provisions of the Civil Service Law §209.4 Harold R. Newman, Chairman of the Public Employment Relations Board, on July 28, 1978, designated the following individuals to serve as a Public Arbitration Panel in the above matter: Bertrand B. Pogrebin, Esq., Employer Panel Member; Thomas Flynn, Employee Panel Member and Thomas J. Newman, Esq., Public Panel Member. The Panel issued an Award dated February 28, 1979. The Award was for the two (2) year period from July 1, 1978 through June 30, 1980.

The proposal by the Professional Fire Fighters Association for the creation of a General Health and Safety Committee was challenged before PERB as being a non-mandatory subject of negotiation prior to the start of the arbitration hearings. During the course of the

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Arbitration

- between -

CITY OF WHITE PLAINS

- and -

PROFESSIONAL FIRE FIGHTERS ASSOCIATION,
LOCAL 274, I.A.F.F.

IA-56;
PERB Case No. M78-8

OPINION AND AWARD OF PUBLIC ARBITRATION PANEL

Members of Public
Arbitration Panel:

RICHARD P. WALSH, JR., ESQ.
Employee Member

BERTRAND POGREBIN, ESQ.
Employer Member

THOMAS J. NEWMAN, ESQ.
Chairman

Appearances:

LOMBARDI, REINHARD, WALSH
& HARRISON, P.C.
FREDERICK K. REICH, ESQ. of Counsel
for Professional Fire Fighters
Association, Local 274, I.A.F.F.

RAINS & POGREBIN, ESQS.
TERENCE M. O'NEIL, ESQ. of Counsel
for City of White Plains

a deadlock on a given issue, the issue would be submitted to binding arbitration.

The Union in support of its proposal states that the committee will provide it with an effective method to present and remedy specific and particular safety matters. It states that the evidence offered by it at the hearing clearly shows that the provisions of the current contract are inadequate to remedy safety hazards existing in the department. It further argues that its evidence shows that particular and specific situations currently existing mandate the need for a General Health and Safety Committee, i.e. the lack of a formal bomb scare training program, repairs to Station #2, condition of Spare Engine #5 and the installation of Scott-Pack Premounts.

The City in opposition to the proposal states that comparability is a factor to be considered by the Panel in making its Award. It points to the fact that the Union's evidence failed to produce one contract in the State which contained a comparable provision to the one in issue.

It argues that the present contract contains provisions adequate to resolve any safety matter. It refers to Article XIV entitled "Safety", Article XV "Fire Safety Committee" and Article XXXII "Labor Management Meetings." It further argues that the Panel must take into account the concept of a collective bargaining package. It argues that the proposal should not be granted in the context of a one-issue interest

arbitration hearings PERB made a determination favorable to the Union. The City indicated that it intended to and did in fact appeal PERB's ruling in the courts. The Panel did not rule on the proposal, but retained jurisdiction on the issue because of the challenge by the City before PERB and the courts. It should be noted that the retention of jurisdiction was without objection of the parties, and in fact was with their consent. After the Court of Appeals denied the City leave to appeal from an Order of the Appellate Division which upheld PERB's determination that the proposal was a mandatory subject of negotiation, an arbitration date was set for September 25, 1980, to hear evidence on the proposal.

On September 25, 1980, the Panel met. By consent of the parties Richard R. Walsh, Jr., Esq. was substituted as the Employee Member of the Panel in place of Thomas Flynn. The hearing on the issue was postponed until November 6, 1980.

At the hearing on November 6, 1980, the parties were afforded full opportunity to present oral and written evidence in support of their respective positions. Thereafter each party submitted post hearing briefs and reply briefs.

GENERAL HEALTH & SAFETY COMMITTEE

The committee proposed by the Union would comprise two (2) representatives from the City and two (2) from the Union. In the event of

and safety of the firefighters are involved, the parties should voluntarily and mutually agree to resolve the issues as quickly as possible. This should be done whether there are written provisions covering the same or not. The argument of the City that the proposal should not be granted in context of a one-interest arbitration where there is no quid pro quo from the Union, is without merit based on the facts and circumstances surrounding this interest arbitration.



THOMAS J. NEWMAN
Public Panel Member & Chairman

arbitration where there is no quid pro quo from the Union.

In arriving at its determination and Award on the proposal, consideration was given to the relevant factors developed by the parties, including a comparison of the conditions of employment with 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; the interest and welfare of the public; a comparison of peculiarities in regard to other trades or professions; including specifically hazards of employment, physical, education and mental qualification and job training skills; the terms of the collective agreements between the parties in the past.

Based on the criteria set forth above, the proposal for a General Health and Safety Committee is denied. The evidence did not show comparable provisions in other contracts. An examination of the existing contract provisions covering health and safety requires a finding that they are adequate.

The evidence did indicate attempts to remedy certain issues under the existing provisions. The evidence did not in my opinion demonstrate that the existing provisions are being fully utilized. The parties should make a greater effort to remedy any health or safety issues under the existing provisions. Any provisions which require additional hearings and/or protracted litigation would not help either party nor would it help in assuring the health and safety of the firefighters. Where the health

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

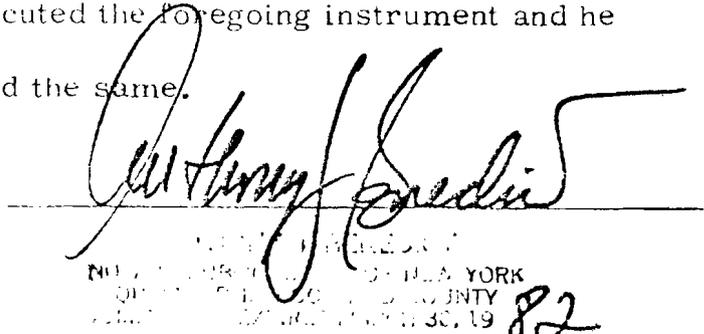
On this ^{10th} day of ~~January~~ ^{February}, 1981, before me personally came and appeared BERTRAND B. POGREBIN to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.



JOEL H. GOLOVITZKY
Notary Public, State of New York
No. 31-6995100
Qualified in New York County
Commission Expires March 30, 1982

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

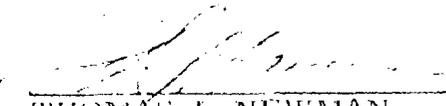
On this 26 day of January, 1981, before me personally came and appeared THOMAS J. NEWMAN to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.



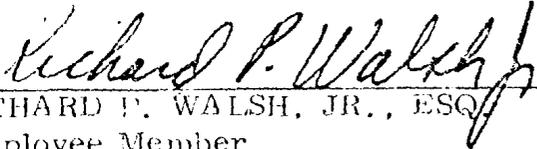
ANTHONY J. BREDA
Notary Public, State of New York
Qualified in Rockland County
Commission Expires March 30, 1982

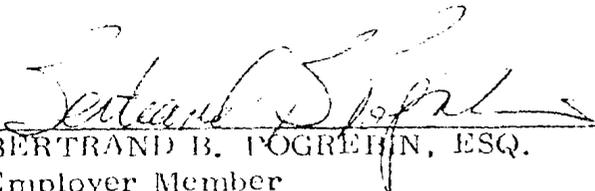
A W A R D

That the Professional Fire Fighters Association's proposal for the creation of a General Health and Safety Committee is denied.


THOMAS J. NEWMAN
Public Panel Member & Chairman

PLEASE NOTE MY DISSENT ON THE GROUNDS THAT THE PRESENT SAFETY PROCEDURES ARE INADEQUATE AND THAT THIS COMMITTEE IS BADLY NEEDED TO PROTECT FIREFIGHTERS' SAFETY IN THE CITY OF WHITE PLAINS.


RICHARD P. WALSH, JR., ESQ.
Employee Member


BERTRAND B. FOGREN, ESQ.
Employer Member

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

On this 30th day of January, 1981, before me personally came and appeared RICHARD P. WALSH, JR., 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.



Notary Public
Gerald L. Faust
Commission Expires March 31, 1981