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CONCILIATION

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of the Interest Arbitration between

The City of Newburgh

-and-

Local 589, International Association of Firefighters, AFL-CIO

PERB Case Number: 1A82-25; M 82-341

Opinion of Chairman
Award of Panel
Partial Dissent of
Employer Member

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Panel of Arbitrators:
Maurice C. Benewitz, Impartial Chairman
Arthur Wilcox, Employee Panel Member
Alfred Cava, Employer Panel Member

Appearances:

For the Union: Joseph P. Rones, Attorney

For the City: John M. Donoghue, Attorney

On October 15, 1982, the Public Employment Relations Board, pursuant to Section 209.4 of the Civil Service Law, designated a public arbitration panel to make a binding award concerning the contract of employment to be effective January 1, 1983 between the City of Newburgh and its firefighters, represented by Local 589, International Association of Firefighters. The original employer representative on this board was Richard Cantor, Esq. On May 5, 1982, counsel for the City informed the panel, on the record, that Mr. Cantor had obligations before Judge Gurhein in Dutchess County Supreme Court and had been replaced by the City Manager. Alfred Cava then was appointed as the employer panel member.

Seven hearings were held before the panel commencing on March 23, 1983 and finishing on July 27, 1983. One joint exhibit, twenty-five union exhibits, and sixteen city exhibits were received. A transcript was taken of the proceeding. Briefs were submitted by the parties. The chairman has read and considered carefully all of the materials presented.

Two executive sessions of the panel convened on September 12 and September 13, 1983.

The panel agreed upon a number of items which were to be included in the contract effective January 1, 1983. There was a dissent from the city panel member concerning the salary award for the calendar year 1983. (See opinion of Alfred Cava appended to this opinion and award.)

This degree of agreement dictates the nature of the opinion, which is solely the product of the chairman. The language of contract articles is the result of the unanimous agreement of the panel with the exception of "Salary, paragraph a)" concerning salary for calendar year 1983. Paragraph a) is the language agreed upon by the chairman and the employee panel member, Arthur Wilcox. Mr. Wilcox signs the award as assenting to all of the substantive items awarded.

Many items were proposed by both parties which the panel unanimously agreed not to recommend. While the unrecommended items might have merit standing alone (and some might be found to be without merit in any case), a contract is the result of the balance of equities and of the relative priorities of the parties. The unrecommended items are not discussed herein and are rejected by the panel because, in their unanimous view, those items were not of sufficient

weight or importance to enter into the contract through a compulsory award. The parties will be able to consider such of these items as either may hold to be of continuing interest in future negotiations.

Unrecommended items (in their entirety) include, in the union demands the changes requested in : Article V,c., Article XXIII, Article XXX, Article XXXIV and (Benefit Fund). City requested changes which are unrecommended in any form include those pertaining to: Article II, Article V A., Article X, Article XIII c., Article XVI, Article XX c., Article XXI (withdrawn by city at executive session), Article XXIII, Article XXVIII, and Article XXIX.

City demands concerning Articles XXXII and XXXIII were agreed upon by the parties prior to the hearing and the agreement was reduced to writing. The parties also agreed to amend Article XXII so as to show the following panel of arbitrators in place of that now in the agreement: Matthew Kelly, Steven Goldsmith, Paul Kell and Nathan Cohen. The parties agreed that the following amended sentence should appear in the last paragraph of Article XXII (emphasis applied to indicate change):

In the event that one of the above arbitrators cannot be selected from said list and be available to hear the grievance within thirty (30) days from the date of the request for an arbitrator...

The changes adopted by the parties in Articles XXII and XXXII/XXXIII are incorporated by reference into the award of this panel and shall be included in the agreement which results from this award. We so find and award.

All contract items except those specifically enumerated as being altered shall remain as they appear in the contract between the parties dated January 1, 1981 to December 31, 1982.

General Economic Statement

The City of Newburgh representative is in dispute with this award only with regard to the amount of the award of salary to the members of the fire-fighter unit for the year beginning January 1, 1983. In coming to a decision concerning this item, the panel took into consideration all the criteria set forth in Section 209.4 (v) of the Civil Service Law. That section reads:

(v) the public arbitration panel shall make a just and reasonable determination of the matters in dispute. In arriving at such determination, the panel shall specify the basis for its findings, taking into consideration, in addition to any other relevant factors, the following:

a. comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours, and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities.

b. the interests and welfare of the public and the financial ability of the public employer to pay;

c. comparison of peculiarities in regard to other trades or professions, including specifically, (1) hazards of employment; (2) physical qualifications; (3) educational qualifications; (4) mental qualifications; (5) job training and skills;

d. the terms of collective agreements negotiated between the parties in the past providing for compensation and fringe benefits, including, but not limited to, the provisions for salary, insurance and retirement benefits, medical and hospitalization benefits, paid time off and job security.

With regard to criterion d, the panel concluded that the Article XII educational benefits provision provided greater than desirable latitude for choice to the firefighter of reimbursed vocational courses and reduced that latitude.

The panel concluded that the severance pay provision of Article XV provided a greater than normal (in other firefighter and/or public employment agreements) opportunity for firefighters to accumulate sick leave and reduced that opportunity. Furthermore, the provision as written provided no incentive to minimize use of sick leave. Thus within the "cap", the panel provided a greater severance benefit percentage for firefighters who use sick leave sparingly and a reduced percentage for those who use sick leave liberally thus accumulating few days. To the extent that the payout is less than the daily rate paid during sick leave, this new provision will provide a long-term saving to the city both because of the "cap" and because the percentage is less than the original pay rate.

In the case of firefighters newly appointed to the department, vacation pay will be reduced by one week for each of the first years of employment - a saving to the city.

Sick leave had no truly effective control. The new requirements concerning certification of the type of illness or injury should reduce unjustified lengthy sick leave, if any.

The change in the provisions concerning the medical board, Article XXIV, reduces the expense to both parties of such proceeding.

The controls of outside employment, while difficult to quantify in terms of any saving, will assure that the city may have proper managerial oversight of second jobs by such members of the unit as may hold them.

The control on exchanges of duty written into Article VB provides substantial recognition of the problems raised by the city in this area. The effects of exchanges on overtime, training and other items of cost will be reduced.

Those areas other than salary in which cost was increased are modest in amount and/or have powerful justification for them. Overtime will be paid in money at time and one-half although compensatory time remains at the straight time rate. Cash overtime payments are already paid at time and one-half under this article but at a tour rate of one-fifth of the member's salary whether the overtime tour is nine or fifteen hours. There is no justification for a difference in hourly overtime rate, which this amounts to. The panel decided that money overtime should, in fairness, be related to the actual number of hours worked. As City Exhibit 8 shows, eleven, of twenty-two of the cities between 14,000 and 34,000 population in the state presently pay overtime at the time and one-half rate. It is difficult to measure the cost. Men on fifteen-hour tours will have a higher overtime rate, but men on nine-hour tours will have a lower rate.

The clothing allowance will be increased for this department (which contains 72 able-bodied members) by \$75.00 per year. City Exhibit 6 shows that the police contract increased the clothing allowance for the 63 uniformed-officer unit from \$250.00 to \$275.00 in 1982, from \$275.00 to \$325.00 in 1983, and from \$325.00 to \$375.00 for 1984. The increase given this comparable uniformed unit is modest.

The provision of emergency meals, pursuant to a new article, is a small cost. It is only incurred when firefighters have attended a fire or catastrophic event without interruption for 5 or more hours. Such a benefit is provided to volunteers who are called in from other communities to aid the city. No less should be done for the city's own employees.

A review of the existing contract shows that the majority of changes agreed upon were requested by the city. The city's gains in the above review far outweigh those of the unit. Major give-backs on mutual exchanges, vacations, sick leave, and outside employment are involved. Such gains cannot be expected from firefighters, any more than from the city's police officers, without some compensating improvements to the unit. If the city did not desire the changes, presumably it would not have included them in its demands.

Criterion c of Section 209.4(v) is easily addressed. The Law Enforcement Assistance Administration, as reported in an IAFF survey, shows that consistently between 1972 and 1982, 72 firefighters per 100,000 died in the line of duty while the rate for police officers was 40 per 100,000 (Ex. U-6). This same source, and statistics from the National Safety Council, showed that in 1981, firefighters had a higher rate of accidental work deaths than any other occupational group. Accident and disability claims approved by the state retirement system for paid firefighters outside of New York City for the years 1976-1977 through 1981-82 show that seven of sixty-four such retirements were approved in Newburgh, i.e. the hazards which are endemic in the occupation operate in Newburgh (Ex. U-4). (The percentages compiled are for too short a time and for too few cases to be able to accept them as indication of the differential

degree of hazard in this occupation in Newburgh as opposed to other localities.)

Training and minimum standards apply to the occupation (Ex. U-10) although it would be hard to judge whether more or less is required of firefighters than of comparable occupational groups. Physical qualifications must be high in this group relative to the average for governmental employment. (The chairman has no objective statistics to support this observation but takes arbitral notice of the physical demands of the occupation.)

The position of firefighter does not require educational qualifications of unusual stringency as compared to other professional city jobs. However, vocational education and college level courses are offered and taken by unit members. The outstanding specific difference between firefighting and most other positions is the high degree of hazard involved and the physical exertion required at fire scenes.

Criterion a of Section 209.4 (v)

Within the City of Newburgh, the most recent wage increases accorded the police force (by the three-year contract effective 1982) were: for 1983: 9.6%; for 1984: 9.2%. CSEA employees received an 8.5% increase for 1983. Management and confidential employees received 9.7% increases for 1983 (Ex. U-14 A and B). The latter increases were wholly within the control of the city council. The city budget includes a 5.6% increase for the firefighter unit for 1983 (Ex. C-2). Thus without negotiation, the city was prepared to pay over half of the increase negotiated with the other units or awarded unilaterally to exempt employees.

City Exhibit 6 shows what are considered by the city to be those "buy-backs" or "give-backs" to the city which the city found to have reduced the cost of the PBA contract below the percentage amount reported. The panel has here acceded to the requests of the city to grant every major give-back demand of the employer. In evaluating the salary increase provided, that must be considered.

It is true that the city will not gain these buy-backs for most of 1983. But the magnitude of the changes and their long-run effect upon the cost and control of the department must not be underestimated.

The dollar savings assigned to some of the changes in the police contract, for example to the 15 minutes extra per shift, are difficult to evaluate. Since evidence on the matter was not taken in depth, the chairman shall not comment on them beyond saying that the concessions of the firefighters appear to be of equal or greater magnitude.

Criterion b Ability to Pay

The parties differ on the fiscal condition of Newburgh. The city concludes that 1983 will close with a deficit of over \$400,000.00. The union finds in the surpluses shown in the budget, in some of the predicted rental returns and the like, great underestimating. The panel is convinced that Newburgh is a poor city, that it has high unemployment, that it is very close to its taxing limits. City Exhibit 11 does show that among State of New York cities of comparable size, Newburgh ranks very low in property values, per capita income, and such measures, and high in taxes on property. It is also true that while such grants may not be all that is desired, the city has received state grants specifically intended to fund improved fire services. But to

consider the economic statistics deeply would be to perceive a dispute concerning the city's economic health where no dispute may fairly be held to exist.

However, the most important fact about the economic evidence arises from the way the city treated the union most comparable to the firefighter unit, the PBA. The same administration and city council, faced with the same fiscal situation, and the same dependence on grants from other governmental units, saw fit to give the PBA increases which the award of this panel will not quite equal for 1983 and 1984.

It is more appropriate to make comparisons between the Newburgh fire and police units than to make comparisons to fire departments in other New York cities of comparable size. However, City Exhibit 11 shows Newburgh to be paying close to the median for salaries of comparable cities. We are not told how the salaries of, and other expenditures on, the Newburgh police compare to those in other cities.

The city has maintained a close degree of parity, despite its fiscal condition, between the fire and police units. There is no justification for this panel to change that relationship. This is particularly true when the same justifications for PBA increases - significant buy-backs - will exist here as well.

What this panel must do is to ask what the parties reasonably should have negotiated for 1983 and 1984 from the perspective of late 1982. That is precisely what the city and the PBA did in late 1981 for 1982, 1983, and 1984. We have tried to accomplish the task so described.

The best estimate of the city's ability to pay can be found in what it, without an arbitration panel, concluded that it could pay its other employees for the same time period. The data are certainly mixed, but the city's response to those data in setting wages for all other units and for its managerial and confidential employees is the best evidence of what the city thought the data meant. The increases for the CSEA and management employees cannot even be characterized as having been based on over-optimism concerning the expected 1982 figures. When the CSEA and management increases for 1983 were executed by the city, the 1982 experience was known in whole or in part. Since the PBA contract for 1982 through 1985 was negotiated in 1981, overoptimism about the future could have been possible. But if there was any unsureness, why did the city grant a three year contract?

As will be seen, we shall award the same increase for the firefighter unit for 1983 as the city has agreed to pay to the PBA in 1983. We shall also provide a 1984 increase which, at the end of the period, will be equal to the 9.2% received by the police unit for that year. However, because of the timing, and the actual impact on the city budget will be slightly more than 7.6%. This is a give-back which does not exist in the police contract at all.

Recommended Contract Provisions

1. We find and award that the contract article entitled term shall read:

Term: the two (2) year period effective January 1, 1983 and terminating December 31, 1984 except as other effective dates may be provided in awarded articles or those in the existing agreement which are unchanged.

2. We find and award as follows concerning Article IX salaries:

Salary:

- a) Effective January 1, 1983 the salaries shall be increased by 9.6% for each and every step and position. Said increase shall be paid on the first pay date in 1984.
- b) Effective January 1, 1984 the salaries shall be increased by 6% for each and every step and position.
- c) Effective July 1, 1984 the salaries shall be increased by 3.2% for each and every step and position.

Exhibit 1, Salary Schedule for Fire Department, shall be rewritten to reflect the changes set forth in paragraphs a), b), and c) above.

[Note that the date for payment of the retroactive amounts was set to meet fiscal needs expressed by the employer panel member.]

The employer panel member dissents from this provision of the award only. His dissenting opinion is appended to the award.

3. We find and award as follows with regard to Article X Section B:

Article X Section B shall be amended to read as follows

Effective January 1, 1984, overtime for extra tours shall be paid at time and one-half the straight-time rate of pay* for all hours worked. Compensatory time will be credited at the straight time tour rate whether or not the member works a 9 or 15 hour tour with the member continuing to have the option as to whether he utilizes a 9 or 15 hour tour for compensatory time purposes.

*For purposes of computing overtime pay owing under this revised Article X Section B, the panel is unanimously agreed that the hourly rate on which the time and one-half is computed shall be 1/2080th of annual salary. The contract shall so reflect, we award.

4. We find and award that

Article XII (Educational Benefit)

shall be amended so that the first paragraph of such article shall read as follows:

Subject to prior course approval by the City Manager of the City of Newburgh, the full cost of tuitions, books and school fees incurred by any firefighter attending vocational educational courses related to fire safety or fire suppression shall be paid by the city upon the successful completion of said course.

5. We find and award as follows concerning severance pay, Article XV:

Article XV (Severance Pay)

paragraph "B", sub paragraph "2" shall be amended as follows: For a pro-rata payment of accrued and unused sick leave according to the following schedule:

<u>Per Cent of Current Daily Rate of Pay for Computation of Payment</u>	<u>Amount of Unused Sick Leave Accumulated</u>
20% of daily rate	0-60 days
30% of daily rate	61-90 days
40% of daily rate	91-120 days
50% of daily rate	121-150 days
60% of daily rate	151-180 days

In no event shall payment be made for accrued and unused sick leave accumulated in excess of 180 days.

6. We find and award as follows with regard to clothing allowance,
Article XVI:

Amend Article XVI (Clothing Allowance) as follows:

A) Effective January 1, 1983 each firefighter shall receive a \$75 increase to \$250 per annum credit as a clothing allowance.

B) Upon permanent appointment to the Fire Department, the appointee is eligible for the clothing allowance for that calendar year and the initial issuance by the department of those items of safety equipment required by the department without effect on such clothing allowance. Additionally, if OSHA should require changes in safety equipment, these items will be initially furnished by the Department at no cost to the employee. All other uniform

items required shall be purchased by the member and all items, including safety equipment, shall be maintained and replaced by the member from the clothing allowance.

7. We find and award with regard to Article XVII, Vacations, as follows:

Effective with the date of this award, Article XVII (Vacations) shall be amended as follows:

- i) Paragraph "A" to be deleted and replaced as follows: Newly hired firefighters, hired on or after the date of this award shall, upon the completion of one (1) complete year of service, will receive fourteen (14) consecutive days of vacation per year until the completion of the fifth year of service. Upon the completion of the fifth year of service, such newly hired firefighters shall be entitled to the same number of consecutive vacation days as other unit members.
- ii) Firefighters with less than seven years of service in the employ of the Fire Department prior to the date of this award shall receive twenty-one (21) consecutive days of vacation.

8. We find and award with regard to the contract provisions on sick leave:

Article XX (Leave), section (B), (1), shall be deleted and replaced with the following: (1) All members on sick leave for a period in excess of seventy-two (72) consecutive hours shall provide a certificate from a doctor certifying the nature of the illness or injury and that the firefighter was unable to perform duty.

9. We find and award as follows with regard to the contract provision on the Medical Review Board:

Amend Article XXIV (Medical Review Board) so that the second paragraph reads as follows:

The determination of the physician selected by the mutual agreement of the individuals physician on the city's physician shall be final subject to an appeal in an Article 78 proceeding by either party.

10. We find and award as follows with regard to outside employment.

Outside Employment: Add a new Article to read as follows.

A) As of the date of this award, all firefighters who may choose to hold another position shall submit, in writing,

to the Chief of the Department for his approval in advance of accepting such position, the following information; place of employment, location(s), telephone number, type of work to be performed, and number of hours to be worked per week.

(B) For those firefighters who as of the date of this award already hold such position, such information as required on "A" above shall be submitted within one(1) week of the date of this award.

(C) In reviewing a request for outside employment, the chief of the department shall consider prior to approving such request the type of work the firefighter will be performing and whether such work may present a conflict of interest. Such outside employment ordinarily shall not exceed 25 hours per week.

- 11) With regard to "~~emergency~~ meals" we find and award as follows:

Emergency Meals: Add a new article to read as follows:
Where attendance, as determined by the officer in charge, at a fire or other catastrophic event requires firefighters to work five or more hours of uninterrupted service at such fire or event, the city shall provide to such firefighters food and drink in reasonable amounts.

- 12) Article V (Hours of Work) Section B shall be replaced with the following:

B. Exchanges of duty may be granted to a maximum of ten (10) exchanges per year to all members holding the same rank within the department and possessing equal ability. Approval of such exchanges shall not be unreasonably withheld. Upon approval of exchanges of duty, responsibility for the performance of the tour shall lie with the firefighter who has agreed to serve the tour and the scheduled firefighter shall be relieved of responsibility therefor.

Members wishing to exchange tours of duty shall submit in writing a request to the chief indicating the name of the firefighter scheduled to work, the name of the firefighter who will actually work, the tour for which the exchange is to take place, the date and squad of the request, and the signature of both firefighters. Such notice shall be submitted seventy-two (72) hours in advance of the commencement of the tour for which the exchange is to take place.

In emergency situations, the City may waive the 72 hour notice.

The firefighter who agrees to work the exchange in place of another shall not be granted time off or an exchange with another firefighter for such tour for any purpose whatever except genuine personal illness or injury.

A firefighter who goes on sick leave for three (3) tours in any calendar year when such firefighter was due to work an exchange for another may lose the right to enter upon exchanges based upon the review of medical evidence or lack thereof by the Chief of the Department.

In no event shall a firefighter be permitted to exchange more than four (4) consecutive tours of duty.

All exchanges must be repaid within the same calendar year with the sole one-time exception that mutual exchanges that were performed prior to the date of this award will be repaid, and may be repaid, with the agreement of the chief, in calendar year 1984.

Any compensation in addition to normal pay, such as holiday pay, shall be paid to the person actually performing the duty.

Award

In light of the discussion set forth above, we, the undersigned members of the public arbitration panel appointed pursuant to Section 205.7 and 209.4 of the Civil Service Law, and having conducted hearings pursuant to Section 205.8 and Section 209.4 (iii), and having considered all of the evidence in light of the criteria set forth in Section 209.4 (v), and having agreed unanimously on all elements of this award except that for Article IX (a), the salary for calendar year 1983 - that item having been agreed upon by the chairman and the employee panel member - do find and award that all of the amendments, changes and additions set forth in this award to the contract dated effective

January 1, 1981 shall enter and be part of the contract for two years dated effective January 1, 1983, and all other elements of the contract dated effective January 1, 1981 shall remain as they there appear.

Subject to the right of review set forth in Section 209.4(vii) of the Civil Service Law, this award shall be final and binding as provided in Section 209.4(vi) of the Civil Service Law.

Maurice C. Benewitz
Maurice C. Benewitz
Impartial Chairman

STATE OF NEW YORK)

ss:

COUNTY OF NASSAU)

On the third day of October, 1983, 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.

PATRICIA G. KOSTER
NOTARY PUBLIC, State of New York
No. 30-4738136
Qualified in Nassau County
Commission Expires March 30, 1984
Patricia G. Koster

I assent in full to all items of this award.

Arthur Wilcox
Arthur Wilcox
Employee Panel Member

STATE OF NEW YORK)

SS:

COUNTY OF WESTCHESTER)

On the 12 day of October before me personally came Arthur Wilcox, 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.

I dissent from the award concerning salary for calendar year 1983 [Article IX (a)] and assent to all other provisions of this award.

Alfred Cava
Alfred Cava
Employer Panel Member

STATE OF NEW YORK)

SS:

COUNTY OF WESTCHESTER)

On the 12th day of October 1983 before me personally came Alfred Cava, 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.

Florence Broskie

FLORENCE BROSKIE
Notary Public, State of New York
No. 4755308
Qualified in Westchester County
Commission Expires March 30, 19 84

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

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CITY OF NEWBURGH

and

LOCAL 589, I.A.F.F., AFL-CIO.

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Case No.
IA 82-85
M 82-341

Compulsory Interest Arbitration

Employer Member Dissenting Opinion

As the employer member of the panel, I dissent from the award and rationale of the majority pertaining to the salary increase of 9.6% effective January 1, 1983. In rendering this salary award, the majority disregarded testimony and exhibits introduced by the City, and not controverted by the union, concerning inability of the City to fund increases in 1983; comparisons with other similar units of employees in comparable jurisdictions; prior bargaining history and current cost of living factors.

The record is clear that the City is currently running a deficit in 1983 and will, in fact, end fiscal year 1983 with a substantial deficit. In fact, the majority agrees and does conclude that the City is in dire fiscal straits whose overall economy is declining. A union proposal to impose a City sales tax to fund the award was properly rejected by the majority as being a disincentive for business to remain in the City and not in the interest of the general public.

The record also indicates that the City does not have any means to increase tax revenues. In addition to the regressive nature of the sales tax, the City is currently at 91.3% of its constitutional tax limitation, the highest use of taxing power in the entire Mid-Hudson region. Other significant economic facts on the record which directly affect the City's ability to pay are, a low per capita assessed valuation for which the City ranked 26th in 27 comparable communities, and a extremely low per capita income for which the City ranked dead last in the same 27 communities. Retail sales (adjusted for inflation) in the City are steadily declining as businesses are relocating to areas outside of the City, further eroding the City's precarious tax base. One can only conclude from the record that the City's overall economic trend is one of a worsening depression, with no upward change forecast for many years to come.

The 1983 budget, in addition to running at a deficit, does not contain

funds for firefighter salary increases. It is recognized that this fact standing alone would not in itself be sufficient justification for not awarding a reasonable and just salary increase. However, considering the entire 1983 budget together with the demonstrated overall frail and declining economic condition of the City, the majority's award does not even approach a reasonable amount which would be within the City's present ability to pay or ability to fund by enacting new, or increasing present revenue sources.

Comparisons of terms and conditions of employment with similar units of employees were introduced by the City and are on the record. Newburgh firefighters receive more favorable terms and conditions of employment than a majority of comparable jurisdictions (nearly all of which are in a better economic posture than Newburgh) introduced into evidence. Regarding salary, Newburgh ranks 9th out of 27 comparable jurisdictions; 4.7% above the median salary of those jurisdictions. Considering together the City's poor economic condition and these comparisons with similar jurisdictions, the award for 1983 belies the evidence contained in the record.

The majority's award of the 9.6% increase is an award made simply on the basis of absolute salary parity with another bargaining unit in Newburgh; the PBA. However, prior bargaining history with the firefighters and its relationship to PBA bargaining does not suggest that parity between these two units has ever existed. In fact, the record indicates that the respective collective bargaining agreements differ widely in such areas as salary, vacations, longevity, holidays, duration of agreements, clothing allowance, etc., which, in situations where police-fire parity exists, would be the items for such parity. In addition, the PBA has a history of negotiating contracts while the firefighters usually have their agreements decided via compulsory interest arbitration.

The PBA is currently in a three year agreement for the period January 1,

1982 through December 31, 1984. The agreement was signed in October 1981, prior to its effective date. A salary increase was negotiated in each year of the agreement with a 9.6% increase effective on January 1, 1983. In return for the various salary increases, the City received consideration in the form of both economic and non-economic concessions. It is important to note that the City received full benefit of its bargain with the PBA in that the considerations became effective from the first day of the agreement. This permitted the City to realize the full savings engendered by such considerations to be used to partially fund the PBA salary increases. The same is not true with this award. Although contained in this award are similar considerations, the City will not realize any cost savings until some time after the award is issued and can be implemented, which will probably be on or about the middle of November, 1983. Therefore, unlike the PBA agreement, the City will not realize at minimum, ten months of savings while the firefighters will benefit fully from a salary increase negotiated for another unit under different circumstances.

It should also be noted that the record indicates that in October, 1981, when the PBA negotiated its agreement, inflation was running at double digit levels. In 1983, inflation is currently slightly under 3%, which further highlights the unreasonableness of the increase awarded.

The amount of the 1983 increase should be consistent with the City's ability to pay. Other agreements negotiated within the City merit review but should be considered in their entirety to include the value of concessions to the City and the conditions existing at the time the agreements were negotiated, such as cost of living factors. Regardless of the weight accorded each of the mandated criteria required to be considered under the Taylor Act, the award and rationale for salary increases for 1983 is not a just and reasonable award in light of the record. The evidence submitted by the City, and not controverted

by the union as to the City's inability to pay was so overwhelming that therefore the award is paramount as to not having considered the mandated criteria of ability to pay.

Dated: *October 12, 1983*

Alfred C. Cava

Alfred C. Cava
Employer Member