

NYS PUBLIC EMPLOYMENT BOARD  
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CONCILIATION

In the Matter of Arbitration between:

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THE CITY OF UTICA, NEW YORK

Respondent,

and

LOCAL 32, INTERNATIONAL  
ASSOCIATION OF FIRE FIGHTERS,  
AFL-CIO

Petitioner  
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Interest Arbitration

PERB Case IA86-4: M85-522

Contract Years 1986, 1987, 1988

## I. INTRODUCTION

This document constitutes the Opinion and Award of a Public Arbitration Panel appointed pursuant to New York Civil Service Law, Section 209.4, to make a just and reasonable determination of a dispute between Local 32, International Association of Fire Fighters, AFL-CIO (hereinafter referred to as the "Petitioner," the "Union," the "Fire Fighters," or the "Employees") and the City of Utica, New York (hereinafter referred to as the "Respondent," the "City," the "Administration," or the "Employer").

The panel, designated by the Chairman of the New York State Public Employment Relations Board, consisted of the following:

Sumner Shapiro  
Chairperson  
64 Darroch Road  
Delmar, NY 12054

John Zeggarelli  
Employer Panel Member  
City Hall  
11 Kennedy Plaza  
Utica, NY 13502

Edward J. Fennell  
Employee Organization Panel Member  
44 North Reservoir Street  
Cohoes, NY 12047

The prior agreement, covering the period of April 1, 1984, to March 31, 1986, expired with the parties at impasse over the terms of a successor agreement. The parties, by joint stipulation, extended the statutory two-year limit of the panel's jurisdiction to an additional year; thus, empowering an Award commencing April 1, 1986, and expiring March 31, 1989. The issues before the panel were as follows:

1. Determination of the salary structure over the tenure of the new agreement.
2. Determination of the Emergency Medical Technician's compensation over the terms of the agreement.

A hearing was conducted pursuant to Part 205 of the Rules of Procedure of New York Public Employment Relations Board on June 7, 1986, at the City Hall in Utica, New York, at which time the parties were afforded full opportunity to present all relevant evidence and arguments. Post-hearing briefs, to be postmarked not later than June 23, 1986, were timely filed and exchanged. Neither party exercised its option to file rebuttal briefs by June 30, 1986, and the record was closed as of that date.

Appearances were as follows:

For Local 32, International  
Association of Fire Fighters

Mr. Cel Kelly, Staff Representative,  
International Association of Fire  
Fighters, AFL-CIO, CLC

Mr. Dan Donaldson, President,  
Local 32

Mr. James Stephens, Vice President,  
Local 32

Mr. Joseph Maline, Secretary,  
Local 32

Mr. John A. Russo, Executive  
Board Trustee, Local 32

Mr. Stephen Abruzzo, Negotiating  
Team Member, Local 32

Mr. Michael Elefante, Negotiating  
Team Member, Local 32

For the City of Utica, New York:

Armond Festine, Esq., Corporation  
Counsel, City of Utica, New York

Mr. Leroy E. Kotary, Employer  
Representative, City of Utica,  
New York

Mr. Thomas Nelson, City Controller,  
Utica, New York

## II. POSITIONS OF PARTIES

### A. Union Positions

The Union is seeking an across-the-board wage increase of 12% for the year commencing April 1, 1986, with an additional 12% becoming effective for the calendar year commencing April 1, 1987, and a final increase of 15% becoming effective for the calendar year commencing April 1, 1988. It argues that because of the low-prevailing wages received

by the bargaining unit members, it has formulated its demands with a view only toward protecting its purchasing power relative to some past prevailing level, foregoing, for the present time at least, a quest for improvements which would enhance the members' living levels. The justification for these demands rests on the assertion that Fire Fighters are involved in dangerous and stressful work, that they are unrelentingly stalked by fatal occupational diseases, that they are on constant call, that they are paid less than other skilled labor and other emergency services which are of no greater utility to the community, that their work is disruptive of family relationships, and that they are frequently compelled to hold additional second jobs in pursuit of decent existences for themselves and their families. They further urge that they are blameless for the general state of the local economy and for the financial plight of their employer. By implication, they argue, they should not be called upon to make sacrifices to ease the City's inability to pay at a level which preserves claimed past standards. But, in actuality, they contend the Employer does, in fact, have the ability to pay in that it enjoys currently an undepleted tax limit of more than \$3.5 million per year - and that the total of its City, County and School Tax is \$41.40 per thousand, the lowest among Albany, Binghamton, Niagara Falls, Schenectady and Troy which are cited as comparable communities. Similarly, anent the percentage of constitutional debt limit depleted by the City of Utica, nominally 24% on a current basis is cited. In 1984, it was about 29%, second only to Binghamton (19%) in the comparison group (Albany 45%, Niagara Falls 83%, Schenectady 31% and Troy 72%). While acknowledging the

City has been operating with a significant general fund deficit, it notes the cooperation of the State Controller's Office has been brought to bear and Utica has received an advance reimbursement to fund some of the accumulated deficit with a relatively long-term reimbursement payout. The City has received authorization to issue bond anticipation notes or serial bonds which will permit it to fund the deficit over the 10-year period of the bond payout. Beyond that, the Union claims Utica may be able to accumulate or accrue substantial additional income out of sales taxes, water rents, or State Aid which would enable it to balance immediately projected budgets.

The Union's most vigorous and salient argument relates to its agreement respecting manning under which the preexisting staffing of eleven (11) pieces of apparatus and a minimum of thirty-six (36) Fire Fighters on duty at all times reduced to ten (10) pieces of apparatus and thirty-two (32) Fire Fighters as of April 1, 1986 - nine (9) pieces of apparatus and twenty-eight (28) Fire Fighters as of April 1, 1987, for a total reduction of two (2) pieces of apparatus and eight (8) Fire Fighters at a minimum at all times. The Union argues the impact of this change constitutes an unresolved issue as the annual reduction in required manpower of nominally 70,000 hours equates to 39 Fire Fighters. The elimination of that number of people was calculated to generate a payroll saving in excess of \$1.25 million per year. This saving alone, they urge, equates to more than 20% of the total department salary account and, as such, can more than offset the first year salary demand.

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The Union's second demand relates to Emergency Medical Technicians who, in the Utica bargaining unit, fall into two classes, EMT-1 and EMT-3, respectively. An EMT-1 receives \$100.00/year for obtaining and retaining the certification, while an EMT-3 person receives \$250.00/year. Either class of EMT receives, in addition, \$7.00/day of duty tour when working on the special rescue vehicle. The Union is seeking an increase in the daily allowance to \$15.00/day to be paid on the established basis and an increase in the annual payment to EMT-1 personnel by \$100.00 in each of the three contract years, bringing the rate to \$400.00 by 1988. It, similarly, seeks an increase of \$250.00/year for the EMT-3, bringing the total to \$1,000.00/annum by 1988. The rationale for this demand is that qualifying involves the acquisition of substantial skills in addition to those of a regular Fire Fighter. These are achieved through lengthy classroom training and examination, all undertaken on the employee's own time. EMT's may be required to respond to emergency medical service or fire calls and emergency medical calls usually run ahead of fire calls in frequency. There were 3,538 such calls in 1985 and since only two people per work shift are assigned to the rescue unit, others render the service without receiving the \$7.00/day annual allowance. The Union cites comparable pay for EMT-1 in Troy, Albany, Binghamton, Rome, Niagara Falls and Oneida, ranging from \$300 to \$500/year - and for EMT-3 in Troy, Albany, Binghamton and Rome ranging from \$500.00 to \$1,250.00/annum, all in the 1986 year.

B. Employer Position

The City's position is that its proposed salary increase of a freeze for year one, and an increase of 4.25% and 4.4% over the final

two contract years is equitable under the circumstances. It contends firstly that Utica is not as far out of line as the Union maintains because a somewhat unique style of compensation is in place under which members receive EMT pay, overtime pay, out-of-title pay, especially generous vacations, and the like. They believe the federal income tax W-2 forms of Utica Fire Fighters will compare favorably with those of similarly-employed persons in comparable jurisdictions. In many cases, the City maintains W-2 income will be 20% up to as much as 30% above the contractually-stipulated salary. Many of the significant benefits are said to be uniformly received by all members, citing, as an example, holiday pay which is paid in a lump sum amounting to 125 hours of pay above the contractually-stipulated level. City Exhibit I, constituting fire contract data from upstate cities of similar populations, was obtained from the Labor Agreement's Data System of the New York State Department of State. The jurisdictions selected were Albany, Binghamton, Elmira, Jamestown, New Rochelle, Niagara Falls, North Tonawanda, Rome, Schenectady, Troy and Utica. The Employer relies upon the data therein to support its assertion that Utica Fire Fighters are equitably compensated on a comparable basis. With respect to ability to pay, the City - through testimony of its Controller, Thomas Nelson - notes its bonds have been downgraded by the rating agency to the so-called "junk bond" level and that only approximately 25 jurisdictions in the nation share the invidious distinction of such low ratings. He testified the City has not been reassessed since 1947 and that it faces a potential cost of \$1 million for doing so. Prospects

for increases from sales tax revenue are characterized as bleak because the surrounding towns are the major benefactors of sales tax income. State Aid, contrary to Union sources, is claimed not to be increasing and, moreover, goes to the counties, rather than the cities. The likelihood of the City deriving more income out of real estate taxes is said to be similarly dismal in that many people, not excluding members of the bargaining unit, have moved to neighboring New Hartford which levies no town tax and relies exclusively on sales tax. While the balance sheet is somewhat better than it was in 1980, the Controller advises this is due to new taxes, increased water fees, sewer fees and sales tax - but that the revenue base not only resists expansion but has, in fact, contracted.

With respect to the question of the impact of manpower reductions, the City asserts the character of the Fire Fighters work and his work schedule itself will, in no way, be altered as a result of the manning reduction which is, therefore, without impact. Moreover, the Employer argues the projected manpower reductions have been overstated in certain documents since the Fire Department has, for a number of months at least, been operating with 25 vacant positions. In fact, the City cites the fact that it has so operated without difficulty in support of the soundness of its manpower reduction plan. Moreover, while the City does not deny that the manpower reduction plan will generate sizable cost reductions, it does note that some payments, such as retirement system payments, are made after the fiscal year in which the service was rendered. As a result, some costs will continue for a period after the positions are eliminated. More importantly, it challenges the concept that all savings realized,

whatever their magnitude, should be distributed exclusively among Fire Fighters, arguing that they become a part of the jurisdiction's funding equation to be allocated on a merit basis among all interests.

### III. OPINION

Pursuant to Civil Service Law, Section 209.4 (v), the panel is charged with formulating an award based on considerations of comparable practice and public interest, central of which is ability to pay. In reviewing the testimony and exhibits, we are, in general, in accord with the Employer's lugubrious diagnosis of urban decay syndrome. The Union's assertion that this jurisdiction's fate is in a class with a number of upstate former canal/railroad towns may provide emotional comfort but is not truly material to the question of ability to pay. The fact that Utica does not stand alone offers little promise as a substitute for sparse resources and rising obligations. The refinancing of accrued general fund deficits on a long-term-pay basis aids cash flow but does not alleviate adverse income/expense ratios.

A related Union assertion holds the Employer's financial difficulties are traceable to ineffective administration, past or present. The bond-rating agency does, in fact, explicitly state there is an "apparent lack of willingness by City officials to provide for balanced operations." It is, of course, beyond the purview and capabilities of this panel to investigate or confirm such charges. Arguably, the Employer's posture in the present proceeding might be favorably assessed by these same

bond raters. The authority to analyze, evaluate and act upon conclusions relating to the effectiveness of an Administration is vested in the voters. An arbitration panel must deal with the situation as it exists to the exclusion of conditions which litigants hypothesize might have prevailed. Employees, public and private, commonly share in the fortunes of their employers. As a general rule, successful, high-standard employers provide better working conditions, compensation and opportunities than marginal, low-standard counterparts. This may be an irritant to the employee of the low-standard enterprise who sees himself as being in no way responsible for his employer's marginal status. We may empathize with this view but the facts of economic life endure.

Turning to the manning question, we demur from the Employer's contention that mere preservation of hours and shift schedules ipso facto establishes that staffing reductions are without negative impact. We infer that nothing has occurred which may be expected to reduce the number of calls and that these calls will now have to be answered by fewer people and fewer pieces of apparatus. The average hiatus between responses may be expected to be of reduced duration. Unless one makes no distinction between routine maintenance chores or waiting time and active response activity, it is, in fact, unlikely that manning reductions will be without impact. However, that does not, in itself, establish that an abnormally high work burden will be imposed upon the employees.

Public safety is a basic, if not the foremost, function of local government, but it is not its sole function and some system of priorities

is, therefore, mandated. Emergency services cannot be scheduled or deferred. The Union, in several of its exhibits, presented arguments against staffing apparatus with only three Fire Fighters. While there is some substance to Employer arguments that certain of these assertions emanate from sources with vested interests in more substantial staffing patterns, they are not completely devoid of objectivity. Union Exhibit VII, the Dallas Fire Department study, was management initiated. The indications of these studies is that three-person crewing does involve some elements of trade-off among levels of effectiveness in confronting emergencies, likely stress, and managing costs. This is a classical function of the management decision-making process and it has obviously received widespread attention among jurisdictions nationally. Utica has joined what appears to be a trend, albeit one which is distasteful to Fire Fighters and not beyond question. However, even accepting *arguendo*, the Employer's contention the Department was traditionally overstaffed, agreement to the new arrangement does represent a give-back, substantively supporting the Union argument that it has, in fact, conscientiously endeavored cooperatively to resolve its differences with the Employer and eliminate differentials among the Utica Department and other Fire Fighters.

The panel has assiduously analyzed and reviewed the economic data submitted by the parties. After balancing for the enthusiasm of advocacy or deficiencies in definition, or specificity, a comparability profile was formulated. We have relied substantially upon City Exhibit I,

Labor Agreement Data from Selected Upstate Cities provided by the New York State Department of State. We included in our profile, on the basis of geography and per capita income, the following:

Albany  
Binghamton  
Elmira  
Jamestown  
Niagara  
Rome  
Troy  
Utica

New Rochelle was excluded because it is in Westchester County and has a per-capita income nearly twice that of Utica. North Tonawanda and Schenectady, to a lesser degree, were excluded because both have better industrial bases and substantially higher 1981 per-capita incomes than the other communities. Albany, despite a higher per-capita income, was retained because it lacked a strong industrial base and to rebalance the profile as there was some ambivalence about excluding Schenectady. Employing practice in these jurisdictions embodied in salary structures reported as maximum annual base salary for Fire Fighters for 1985 (shown in City Exhibit I, plus maximum longevity increments shown in Table 10), we found Utica's salaries to be nominally 10% below the average of the profile of comparables. Comparability, as noted earlier, was based upon geographical location and last reported per-capita income. This falls short of the percentage differences set forth in the Union's hearing and post-hearing briefs between which there is some variance but which generally shows a Utica disadvantage of more than 20%. This arose, in part, because the Fire Fighters

employed the Utica maximum in the expired agreement as 1986 salaries which it then compared with 1986 practice in other communities. We interpret the contractually-stipulated Utica maximum to represent its 1985 schedule - and our comparative data from other communities is similarly taken on a 1985 basis. Additionally, in order to correct the differences in longevity practices, comparisons, as indicated above, are based on a total of salary plus longevity payments.

We have further examined the Employer's contention that the differential between Utica and otherwise comparable jurisdictions is narrow when one considers the special benefits received by its Fire Fighters, a claim which the Union sharply contests. Our examination of City Exhibit I does not nourish the Employer's argument but since fringes per se are not an issue here, we refrain from explicit evaluation of the Union's countercharges.

We are particularly concerned about Union allegations of occupational health risks. We think it axiomatic that no employer should expect employees to bankrupt their health in order to earn a livelihood and that employees, on the other hand, should not expect the employer to incur financial bankruptcy in order to pay wages above some civilized minimum. One must make value judgments about minimum wages, as well as tolerable risk levels. Both of these considerations demand more expertise, investigation and reflective thinking than can be brought to bear in the instant proceeding; however, some superficial comment respecting the Union's submission of parochial morbidity and mortality data is warranted.

Any system of objective inference must build upon valid and reliable data. Lay people may inadvertently commingle within the cancer classification a number of maladies which medical scientists recognize as being distinctly different and as originating very probably from different prime causes. After assembling and cataloguing such data, one may proceed to determine how likely or unlikely it is that such a collection of experiences will arise out of mere chance. If it is found that the enumerated experiences are unlikely to arise by chance, unusual occupational exposures with which the victims are associated become very suspect. However, the determination of whether random, that is, chance - or peculiar non-random causes - are involved requires the use of statistical inference techniques. The obstacles to arriving at a sound conclusion on a so-called common sense basis may be illustrated by the example in Table I below. We will assume the numbers represent the incidents of some specific type of heart disease in some group, say, white males in the 50 to 55-year-old age bracket, where the left column represents data from the population at large, while the right column data relates to Fire Fighters from the same geographic area as the general population.

TABLE I  
Illustrative Incidence Analysis

	<u>Number of Cases per 100 Persons</u>	
	<u>Area General Population</u>	<u>Area Fire Fighters</u>
	5.01	5.62
	4.76	5.25
	4.98	6.31
	5.56	5.07
	5.05	5.42
Total:	<u>25.36</u>	<u>27.67</u>
Average:	5.072	5.534

An intuitive analyst may readily conclude there is no question but that the Fire Fighters are at greater risk. Four of the five readings for the general population are lower than, i.e., better than that of the Fire Fighters in those same areas. Moreover, the average for the Fire Fighters is roughly 10% higher than it is for the general population groups. But, one may also argue that it is difficult to be sure about anything when there is so much variation in the individual groups. The lowest Fire Fighter experience is 5.07 which is less than the 5.56 for the general population in that area. The highest Fire Fighter experience rate is 6.31, which is very much higher than the 4.98 reported for the area's general population. Still, there is a 25% variation among Fire Fighters, themselves, while there is only about a 17% variation (4.76 to 5.56) among general populations. The intuitive analyst may argue that the Fire Fighter data, being more variable, is so unreliable that no inference may be drawn. Without complicating this presentation by introducing the actual calculations, suffice it to say that application of probability theory tells us that if there were no difference between the experience of the general population and the Fire Fighters, we could still expect to find the kind of comparative statistics in the Table in at least ten (10) out of every one hundred (100) studies.<sup>1/</sup> By way of a more mundane explanation, we offer the observation that this is only slightly less likely than rolling a "four" with a pair of dice - and somewhat

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<sup>1/</sup>If the same averages and variances were present where 30, rather than 5, communities had been studied, the probability of the difference found being chargeable to chance would be less than 1 in every 100. That would be considered a most unlikely chance occurrence and the difference would be considered significant.

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more likely than rolling a "three." None of this is to suggest an absence of health risks associated with fire fighting as there are intuitive indications to the contrary. The point being made is that proof demands application of something more objective than intuition, especially when the scientific practitioners and tools are available. If risks can be precisely identified, preventive measures may be possible. Fire Fighters have a right to expect unstinting efforts to safeguard their health. A municipality which abdicated this responsibility on the theory that extra payment satisfied its obligation would, in effect, be stating it had purchased a license to maim. The Union's study effort is a worthy undertaking but, in our view, its thrust should be in the direction of prevention.

The panel has evaluated the salary issue in two phases; namely, deriving an increase factor which will essentially maintain the differential between Utica and the referenced profile - and fixing an equitable adjustment to address the decrement separating Utica from the profile average. The 1986 increases shown in Table XVI average to nominally 6%. With predicted continuing containment of inflation rates, we have estimated the 1987 level at 5.25% - and the 1988 level at 4.5%. The compounded total of these three values is about 16.6%, and we have assumed a 6% additional adjustment spread over the three years of the agreement will equitably treat the difference between Utica and the profile of comparable communities. The aggregate compounded effect of these adjustments would be an increase of nominally 24% over the three-year life of the agreement. We recognize, however, that the productivity savings will not be realized in their entirety for several years and that they are, in fact, not available

exclusively to redress Fire-Fighter instincts for self-advancement. We recognize also that the Employer's present problems are particularly acute and have, therefore, structured an increase schedule deferring the substantial impact of adjustments into the second half of the contract's term. The schedule tabulated below falls within the stipulated constraints.

<u>Effective Date</u>	<u>Amount of Increase</u>
April 1, 1986	4.0%
January 1, 1987	3.5%
July 1, 1987	4.25%
April 1, 1988	5.0%
September 1, 1988	5.5%

The Emergency Medical Technician issue has divided and perplexed the panel. The putatively-comparable data provided in the parties' exhibits shows little consistency and there is a paucity of information about the numbers of recipients and the ways in which they are assigned in other jurisdictions. We are nonetheless constrained to fashion a resolution from among the diverse views of panel members. On the basis of its best inferences, and in consideration of the relatively modest amounts involved, the panel has agreed to a one-time increase at the inception of the contract in the amount of \$75.00/annum for EMT, Class 1 - and \$100.00/annum for EMT, Class 3. In addition, it will award an increase in the per diem rate for persons serving on the first responder apparatus as stipulated in Article IV, Section 1-B, in the amount of \$3.00/day, to a total of \$10.00/day. All the EMT adjustments will commence retroactively to April 1, 1986.

IV. AWARD

The undersigned, constituting the Public Arbitration Panel, duly designated by the New York State Public Employment Relations Board to render a determination in the dispute between Local 32, International Association of Fire Fighters, AFL-CIO, Petitioner, and the City of Utica, New York, Respondent, award as follows. In addition to those provisions voluntarily agreed-to between the parties, a new agreement between the parties shall incorporate the following provisions:

1. The term of the agreement shall be retroactive to April 1, 1986, and shall extend through March 31, 1989.
  2. Effective retroactive to April 1, 1986, the wage schedule for Utica Professional Fire Fighters Association appearing as Article IV, Section 1-C, in the expired agreement shall be uniformly increased by 4%.
  3. Effective January 1, 1987, the salary structure calculated pursuant to No. 2, immediately above, shall be uniformly increased by 3.5%.
  4. Effective July 1, 1987, the salary structure calculated pursuant to No. 3, immediately above, shall be increased by 4.25%.
  5. Effective April 1, 1988, the salary structure calculated pursuant to No. 4, immediately above, shall be increased by 5.0%.
  6. Effective September 1, 1988, the salary structure calculated pursuant to No. 5, immediately above, shall be increased by 5.5%.
  7. Effective retroactively to April 1, 1986, the annual additional payment to certified Emergency Medical Technicians, Class 1, stipulated to be \$100.00/year under the provisions of Article IV, Section 1-B, of the expired agreement, shall be increased by \$75.00/year to \$175.00/year.
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- 8. The additional annual payment to Certified Emergency Medical Technicians, Class 3, stipulated in Article IV, Section 1-B, at \$250.00/year, shall be increased by \$100.00 to \$350.00/year.
- 9. The additional compensation to New York State Certified Emergency Medical Technicians riding the first responder apparatus (Car 206), as stipulated in Article IV, Section 1-B, at \$7.00/day, shall be increased by \$3.00 to \$10.00/day.

The above determinations address all impasse issues enumerated in the Fire Fighters' petition for compulsory interest arbitration.

Respectfully submitted,

*Sumner Shapiro*  
 Sumner Shapiro, Arbitrator  
 Chairperson  
 64 Darroch Road  
 Delmar, NY 12054

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

Sworn to before me this 13<sup>th</sup> day  
 of August, 1986.

*Mary Anne Tommaney*  
 Notary Public

MARY ANNE TOMMANEY  
 NOTARY PUBLIC, State of New York  
 Qualified in Albany County  
 Commission Expires March 30, 1987

CONCURRING:

*John Zeggarelli*  
 John Zeggarelli  
 Employer Panel Member  
 City Hall - 11 Kennedy Plaza  
 Utica, NY 13502

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

Sworn to before me this 5<sup>th</sup> day  
 of August, 1986.

*Donald J. Felice*  
 Notary Public

ONEIDA Co.  
 COMM. EXP 3/30/87

CONCURRING:

*Edward J. Fennell*  
 Edward J. Fennell  
 Employee Organization Panel Member  
 44 North Reservoir Street  
 Cohoes, NY 12047

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

Sworn to before me this 1<sup>st</sup> day  
 of August, 1986.

*Elizabeth K. Phoenix*  
 Notary Public

ELIZABETH K. PHOENIX  
 Notary Public, State of New York  
 Albany County  
 My Commission Expires Mar. 30, 1987  
 # 4653148