

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Interest Arbitration
Between

PERB CASE NOS.
IA87-30;M87-197

CITY OF YONKERS,
Public Employer,
And

JS Case No.
1338

MUTUAL AID ASSOCIATION OF THE PAID FIRE
DEPARTMENT OF THE CITY OF YONKERS, NY, INC.,
LOCAL 628, IAFF, AFL-CIO,
Employee Organization,
And

OPINION
AND
AWARD

NEW YORK STATE EMERGENCY FINANCIAL CONTROL
BOARD FOR THE CITY OF YONKERS,
Intervenor.

NYS PUBLIC EMPLOYMENT RELATIONS BOARD
RECEIVED

JAN 08 1990

Before the Public Arbitration Panel:

CONCURRENCE

JOHN E. SANDS, Public Member and Chairman
MICHAEL R. HITSMAN, Public Employer Member
THOMAS F. DE SOYE, Employee Organization Member

OPINION

This interest arbitration case arises under Section 209.4 of New York State's Civil Service Law. On April 14, 1988 PERB Chairman Harold R. Newman appointed this Public Arbitration Panel to make a just and reasonable determination of the parties' collective bargaining impasse.

Pursuant to our statutory authority, we conducted hearings in Yonkers, New York on September 26, 27, October 6, 7, December 20, 21, 1988; February 6, 7, 27, 28, March 31, April 11, 12, May 3, June 8, and 9, 1989. Both sides appeared by counsel and had full opportunity to adduce evidence, to crossexamine each other's witnesses, and to make argument in support of their respective positions. Each submitted lengthy pre- and post-hearing briefs, and neither has raised objection to the fairness of this proceeding.

Also appearing and participating in this case was the New York State Emergency Financial Control Board of the City of Yonkers ("EFCB"), by its Counsel, James F. Marrin, Esq.

This Panel met in executive session in Elmsford, New York on September 21 and October 11, 1989.

In arriving at our determination of this dispute, we have considered the entire record before us, including our assessments of witnesses' demeanor and credibility as well as the probative value of evidence. We have reviewed all of the parties' evidence and arguments, taking into consideration Section 209.4's express criteria:

- 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.

In addition, pursuant to Section 8(h)(3)(a) of the New York State Financial Emergency Act of 1984 for the City of Yonkers ("FEA"), in that consideration we have accorded substantial weight to the financial ability of the City of Yonkers to pay the increases in wages and fringe benefits that we are awarding, and, upon that consideration, we are satisfied that the City is financially able to pay. Indeed, EFCB's Executive Director confirmed that the increases we award fall within the City's EFCB-approved 1987-91, Financial Plan.

At issue in this dispute are the terms and conditions of employment for Yonkers' firefighters in Local 628's bargaining unit for the period beginning January 1, 1987. At the outset of this proceeding the parties entered the following Stipulation defining the scope of their dispute:

1. In the pending interest arbitration proceeding between the parties (Case #IA87-30; M-87-197) each party shall present to the Public Arbitration Panel for consideration and Award only the following negotiation demands/subjects presented in their respective proposals for submission to the panel:

- For Local 628:
- a) Two year duration (Item 1);
 - b) Base Salary 1/1/87 - 9% increase; 1/1/88 - 9% increase (Item 2);
 - c) [Members may elect to work a mutual swap for a Chart Tour] (Item 5);
 - d) 1% increase in Variable Benefit Funds - from 2.58% to 3.58% (Item 9);
 - e) Compute sick leave on a 12 hour day (Item 14);
 - f) At member's option binding arbitration to resolve line of duty disputes (Union Proposal for 207a Procedure attached as Appendix A) (Item 15);
 - g) Holiday Pay to be calculated on a 12 hour day (Item 32);
 - h) Line firefighters to receive a no count for working overtime on certain holidays for purposes of equal distribution of overtime and overtime records to be made available by Department to Union (Item 44)
- For the City:
- a) Two year term effective January 1, 1987 through and including December 31, 1988 (Item 1);
 - b) Total economic package not to exceed 4.5% per year (Item 2);

- c) Eliminate and delete the existing section 4:07.02 of the collective bargaining agreement and provide for a new section which shall provide for an extra hour of pay, at the straight time rate, for each hour a veteran actually works on Memorial and/or Veterans Day (Item 3);
- d) Procedure for award of benefits under GML 207a annexed hereto as Appendix B; (Revised Item 4);
- e) City proposal for distribution of overtime annexed hereto as Appendix C (Item 6);
- f) Amend section 4:02 of the collective bargaining agreement to provide for a daily rate based on 1/260 and an hourly rate based on 1/2080 for purposes of calculating fringe benefits (Item 8);
- g) Amend section 9:01 [Variable Benefit Fund] to change the method of calculating the City's contribution from a percentage to the present fixed dollar amount (Item 11);
- h) Amend section 17:02 to provide for 24 hours prior notice to members for scheduling chart tours (Item 16).

2. All other demands are hereby withdrawn by each party from the Panel with prejudice.

3. Prior to December 15, 1988, the parties shall execute a successor collective bargaining agreement with a stated term of January 1, 1987 through December 31, 1988, which Agreement shall continue all of the existing terms of the parties' 1985-1986 Agreement. The parties recognize,

intend and agree that such successor Agreement shall be a collective bargaining agreement within the meaning of Sec. 209-a.1.e of the Public Employees' Fair Employment Act.

4. The parties recognize, intend and agree that the terms of the Public Arbitration Panel Award shall control for the term of said award only with respect to the particular items awarded. For purposes of this agreement, the term "award" shall mean an award issued by the Public Arbitration Panel in the above referenced proceeding and any modification thereof by a court of competent jurisdiction. Both parties reserve all rights to maintain and pursue any and all of their positions or claims that they may have with respect to the duration or term of any items awarded by the Panel.

5. The improper practice charges currently pending before PERB in cases U-10030, U-10050, U-10112 and U-10130 are hereby withdrawn and the parties shall, subsequent to the execution of this stipulation, take whatever administrative steps are necessary before PERB to close the cases. [Joint Exhibit 2.]

In addition, the parties have, in concurrent grievance proceedings, resolved Union Issues (c) and (h).

By way of history, the roots of this case extend back to 1984. In the midst of the City's financial problems that required State intervention to survive, the City and the leaders of various unions met to discuss a coordinated strategy and program that would address those problems without requiring a wage freeze such as that imposed during the City's 1976 fiscal crisis. Following that period, and with the approval of the State and the EFCB, Yonkers and its unions agreed to a 4.5% total wage increase package (including "spin-offs") for 1985 and 1986.

For 1987 through 1990, the City's EFCB-approved fiscal plan enabled the City to negotiate four 4.5% annual increases on base salary (plus "spin-offs") for all relevant units. When Local 628's membership refused to ratify that deal, the City reverted to the continuing offer of a two-year deal at 4.5% total (amounting to about 3.76% on base plus "spin-offs"). The parties negotiated to impasse, and this interest arbitration proceeding ensued.

Impelling the parties' dispute has been their fundamental disagreement concerning the FEA's impact on the City's Taylor Law obligations and upon this Public Arbitration Panel's authority to deviate from the City's 1987-91 Financial Plan approved and certified by the EFCB. On the one hand, the City argues that, as a matter of both law and factual necessity, the City cannot pay --and this Panel is powerless to award-- any economic benefits that are not expressly provided in the City's

EFCB-approved four-year plan. The Union, on the other hand, insists (a) that the FEA did not repeal the Taylor Law, (b) that the City has overcome whatever fiscal straits it suffered, and (c) that we must apply the Taylor Law's criteria to Yonkers' present, rosy fiscal picture and, giving substantial weight to the City's present ability to pay, award the substantial wage increases the Union seeks.

Also at work in this dispute is the parties' disagreement concerning the existence, content, and compulsory nature of the so-called "Yonkers Compact." Reduced to bare essentials, these are the parties' positions. The City urges the Compact as an express agreement on economic benefits accepted by the City and all relevant bargaining representatives to govern terms and conditions of employment for the four-year period commencing January 1, 1987. The Union responds, "What compact?"

We had extensive testimony from both sides concerning what happened during the City's fiscal crisis and how the City, its unions, and its legislative caucus pieced together a strategy and program that the State accepted as the condition for "bailing out" the City and avoiding a wage freeze such as that the City's workers had suffered in 1976. The parties and their counsel have characterized that history with great ingenuity and industry to

support their differing views. And neither side has budged an inch on their fundamental positions concerning the "Compact." As a result, my view must govern; and it will be conclusive of this Panel's determination.

On the entire record described above, I find that there was a general understanding --impelled by irresistible forces of political and fiscal necessity and a State-declared fiscal emergency-- that has been referred to as the "Yonkers Compact." The compact was not an enforceable contract, but it reflected the context in which all felt in good faith that the crisis could be weathered.

I give credence to the pattern of that compact concept, and I accordingly impose it for the two-year period of my jurisdiction. I therefore reject both the Union's demand for annual increases of 9% on base (plus "spin-offs") and the City's offer of two 4.5% total annual packages (including "spin-offs"), and I direct that the City pay firefighters the same pattern 4 1/2% annual increases on base (plus "spinoffs") effective January 9, 1987 and January 8, 1988 that it has paid all other employees pursuant to its four-year financial plan.

I reach that conclusion with complete confidence that it is within the City's financial ability to pay. EFCB Executive Director Susan Brewster testified without contradiction (a) that the City's EFCB-approved four-year financial plan can support,

for this firefighter unit, 4 1/2% annual increases plus "spin-offs" and (b) that, by definition, that increase is within the City's financial ability to pay.

In addition, we unanimously agree that the term of this award should be the two-year maximum allowed by our Section 209.4 jurisdiction. The parties' successor agreement shall therefore begin effective January 1, 1987 and end December 31, 1988.

Finally, in the course of our deliberations, we have unanimously concluded that, of the remaining issues, it is appropriate to award the procedure concerning statutory benefits provided by General Municipal Law Section 207-a. Upon my evaluation of the parties' respective proposals and arguments, I have drafted the attached procedure; and we unanimously direct that it be included in the parties contract and become effective November 20, 1989.

As to each and every remaining demand raised by the parties, a majority of us agree that there is insufficient evidence in the record before us to justify a change in the status quo.

By reason of the foregoing we issue the following

AWARD

1. Term: The term of the parties' successor agreement shall be January 1, 1987 through and including December 31, 1988.

2. Salary: The following across-the-board increases in annual salaries for members of the bargaining unit shall be paid together with the appropriate additional impact on all "spin-offs:"

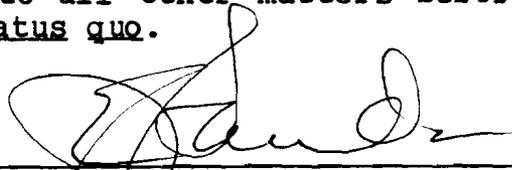
Effective January 9, 1987 - \$1,403.56

Effective January 8, 1988 - \$1,466.71

3. General Municipal Law Section 207-a Procedure: The attached procedure ("Appendix A") concerning the statutory benefits provided by General Municipal Law Section 207-a shall appear in the parties' agreement and shall be effective on November 20, 1989.

4. Residual matters: As to all other matters before us there shall be no change in the status quo.

Dated: October 16, 1989
South Orange, New Jersey



JOHN E. SANDS
Public Member and Chair

I concur with all four paragraphs of this Award.

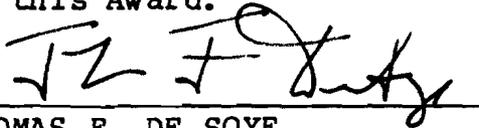
Dated: October 18, 1989
Elmsford, New York



MICHAEL R. HITSMAN
Public Employer Member

I dissent as to Paragraphs 2 and 4 of this Award.

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Dated: October 18, 1989
White Plains, New York



THOMAS F. DE SOYE,
Employee Organization Member

[Dissenting and concurring opinions are attached as Appendices B and C].

AFFIRMATIONS

Pursuant to Article 75 of the Civil Practice Law and Rules of New York State, we affirm that we have executed the foregoing as and for our Award in the above-captioned matter.



JOHN E. SANDS



THOMAS F. DE SOYE



MICHAEL R. HITSMAN

APPENDIX A

General Municipal Law Section 207-a Procedure

Section 1

This policy is intended to provide a procedure to regulate both the application for, and the award of, benefits under section 207-a of the General Municipal Law (hereafter referred to as "GML 207-a"). This policy is not intended to limit or eliminate any additional requirements or benefits regarding GML 207-a set forth in the statute or caselaw, or to modify any requirements set forth in the Yonkers Fire Department Book of Rules and/or Orders to the extent that such Rules and/or Orders are not inconsistent with this procedure.

Section 2

A member shall notify the Officer on Duty as soon as possible of any injury in the performance of his duties or sickness as a result of the performance of duties which necessitates medical or other lawful remedial treatment. Said injury or sickness shall hereafter be referred to for purposes of this procedure as a GML 207-a disability.

Section 3

Application for GML 207-a benefits for a member of the Department may be made by the member, the Commissioner, a Deputy Chief designated by the Commissioner, or some other person acting on behalf of such member.

Section 4

An application shall be deemed "untimely" unless it is received by the Commissioner within thirty (30) days after the date of the injury or sickness upon which the application is based or within thirty (30) days after the member discovers, or should have discovered, the injury or sickness upon which the application is based. The Commissioner may, in his discretion, excuse the failure to file the application within the thirty day period upon a showing of good cause.

Section 5

The application must be made in writing on the form attached to this procedure.

Section 6

After the filing of said application, the applicant shall submit to one or more medical examinations as provided by law.

Section 7

The Commissioner shall have exclusive authority to initially determine the applicant's eligibility for benefits under GML 207-a. The Commissioner shall have the authority to conduct a full investigation of the facts concerning the application.

Section 8

Pending the determination of an application, time off taken by the applicant after submission of said application and alleged to be attributable to the injury or sickness which gave rise to the claim for GML 207-a benefits shall be charged based on the determination.

Section 9

The Commissioner shall render a written decision on the application for benefits within thirty (30) days after receipt of all necessary information as indicated in section 7 above. A copy of the decision shall be mailed to the applicant at the address specified in the application.

Section 10

If the decision is that the applicant is eligible for GML 207-a benefits, then the applicant shall be so categorized and pursuant thereto any time off taken due to such injury or sickness shall be charged to GML 207-a leave. The member's GML 207-a benefits shall continue so long as the member remains eligible.

Section 11

If the decision of the Commissioner is that the applicant is not eligible for GML 207-a benefits, then at any time within thirty (30) days from receipt of such decision, the applicant may serve a written demand on the City Manager or his designated representative for further evaluation of the application. The demand shall contain a statement of the reasons why the applicant believes further evaluation of the application is needed.

Section 12

Upon receipt of a timely written demand for further evaluation of a GML 207-a claim, the City Manager or his designee shall obtain from the Fire Commissioner all information provided in the application and pursuant to Section 7 of this procedure. The applicant may submit additional written information concerning his GML 207-a claim to the City Manager or his designee. The City Manager or his designee may require the production of additional information concerning the claim and/or may conduct an informal conference with the applicant. The City Manager or his designee shall render a written decision on the GML 207-a claim no later than fourteen (14) days after receipt of all necessary information required pursuant to this Section 12.

Section 13

In the event the applicant is not satisfied with the decision at the City Manager level and wishes to appeal the decision, the applicant shall file within thirty days of receipt of the City Manager's decision a written demand for arbitration of his GML 207-a claim. The claim shall be submitted to binding arbitration pursuant to the Voluntary Labor Arbitration Rules of the American Arbitration Association or the Voluntary Grievance Arbitration Rules of the New York State Public Employment Relations Board (Part 207 of the PERB Rules). In submitting the claim to arbitration, the party initiating the arbitration shall request that the administering agency forward for selection by the City and the member a list of seven arbitrators from its panel of arbitrators.

The parties to the arbitration shall be the City and the member involved. All costs billed by the arbitrator and the administrative agency shall be borne equally by the City and the member. All other costs shall be paid by the party incurring such costs, i.e., witnesses, exhibits, transcripts, etc.

Section 14

The Arbitrator shall have the authority to decide, de novo, the claim of entitlement to GML 207-a benefits. The Arbitrator shall have authority to consider and decide all allegations and defenses made with regard to the GML 207-a claim, including but not limited to assertions regarding the timeliness of the GML 207-a claim. In the event of a dispute between the parties as to the nature of the proceeding, the Arbitrator shall first decide whether the proceeding presents an issue of an applicant's initial entitlement to GML 207-a benefits or whether the proceeding presents an issue of termination of GML 207-a benefits. The burden of proceeding with evidence as to the nature of the issue(s) presented shall be on the member. In the event the Arbitrator decides that the matter presents an initial GML 207-a claim, the member shall have the burden of proof by a

preponderance of the evidence that he is entitled to receive the benefits set forth in GML 207-a with respect to an injury alleged to have occurred in the performance of his duties or to a sickness resulting from the performance of duties which necessitated medical or other lawful remedial treatment. In the event the Arbitrator decides the matter presents a termination of GML 207-a benefits, the Fire Department shall have the burden of proof by a preponderance of the evidence that the member is no longer eligible for GML 207-a benefits.

The Arbitrator shall have no right to amend, modify, nullify, ignore, add to, or subtract from the provisions of this procedure. The Arbitrator shall have no authority to make a decision on any issue not submitted or raised by the parties.

The decision and award of the arbitrator shall be final and binding on the parties.

REVIEW OF DISABILITY

Section 15

(a) The Commissioner may periodically review cases of members receiving GML 207-a benefits for the purpose of determining whether the individual continues to be entitled to GML 207-a benefits, and in furtherance thereof may take such action as is appropriate under the law.

(b) Any individual who is receiving benefits under GML 207-a continues to be subject to provisions set forth in the Department's Book of Rules and in departmental orders concerning notification to the Fire Department of the member's condition.

Section 16

Upon receipt of a certification from the Fire Department Surgeon, or a physician-designee, that a member is able to perform the duties of his position, the Commissioner shall notify the member of the termination of his GML 207-a benefit. The Commissioner shall cause service of a written notice of termination setting forth the effective date thereof and a copy of the physician certification to be made on the member.

Section 17

If the member disagrees with the termination of GML 207-a benefits, he may serve upon the City Manager or his designated representative, within thirty (30) days after the receipt of the Commissioner's notice, a written appeal for review of the determination, specifying the basis for the demand.

Section 18

Upon receipt of a timely written appeal of the Commissioner's decision to terminate GML 207-a benefits, the City Manager or his designee shall obtain from the Fire Commissioner all information considered in connection with review of the member's GML 207-a status. The member may submit additional documents concerning his GML 207-a status to the City Manager or his designee. The City Manager or his designee may require the production of additional information concerning the member's GML 207-a status as set forth in Section 7 of this procedure and/or may conduct an informal conference with the member. The City Manager or his designee shall render a written decision on the appeal of the decision to terminate GML 207-a benefits no later than fourteen (14) days after receipt of all necessary information required pursuant to this Section 17.

Section 19

In the event the member is not satisfied with the decision at the City Manager level and wishes to appeal, the member shall file within thirty days of receipt of the City Manager's decision a written demand for arbitration of his termination of GML 207-a benefits and status. The claim if timely filed shall be submitted to binding arbitration pursuant to the Voluntary Labor Arbitration Rules of the American Arbitration Association or the Voluntary Grievance Arbitration Rules of the New York State Public Employment Relations Board (Part 207 of the PERB Rules). In submitting the claim to arbitration, the party initiating the arbitration shall request that the administering agency forward for selection by the City and the member a list of seven arbitrators from its panel of arbitrators.

The parties to the arbitration shall be the City and the member involved. All costs billed by the arbitrator and the administrative agency shall be borne equally by the City and the member. All other costs shall be paid by the party incurring such costs, i.e., witnesses, exhibits, transcripts, etc.

Section 20

The Arbitrator shall have the authority to decide, de novo, the claim of continued entitlement to GML 207-a benefits. The Arbitrator shall have authority to consider and decide all allegations and defenses made with regard to the GML 207-a claim, including but not limited to assertions regarding the timeliness of the GML 207-a claim. In the event of a dispute between the parties as to the nature of the proceeding, the Arbitrator shall first decide whether the proceeding presents an issue of an applicant's initial entitlement to GML 207-a benefits or whether the proceeding presents an issue of termination of GML 207-a benefits. The burden of proceeding with evidence as to the

nature of the issue(s) presented shall be on the member. In the event the Arbitrator decides that the matter presents an initial GML 207-a claim, the member shall have the burden of proof by a preponderance of the evidence that he is entitled to receive the benefits set forth in GML 207-a with respect to an injury alleged to have occurred in the performance of his duties or to a sickness resulting from the performance of duties which necessitated medical or other lawful remedial treatment. In the event the Arbitrator decides the matter presents a termination of GML 207-a benefits, the Fire Department shall have the burden of proof by a preponderance of the evidence that the member is no longer eligible for GML 207-a benefits.

The Arbitrator shall have no right to amend, modify, nullify, ignore, add to, or subtract from the provisions of this procedure. The Arbitrator shall have no authority to make a decision on any issue not submitted or raised by the parties.

The decision and award of the arbitrator shall be final and binding on the parties.

Section 21

In the event that any article, section or portion of this procedure is found to be invalid by a decision of a tribunal of competent jurisdiction, then such specific article, section or portion shall be of no force and effect, but the remainder of this procedure shall continue in full force and effect. Upon the issuance of a decision invalidating any article, section or portion of this procedure, either party shall have the right immediately to reopen negotiations with respect to a substitute for such invalidated article, section or portion of this procedure.

Section 22

An applicant hereunder may have a representative of his choosing at any stage of this procedure.

Section 23

This procedure shall take effect on November 20, 1989 and shall apply to any claim of entitlement to or use of GML 207-a benefits made after that date. In the event utilization of GML 207-a benefits after said date is based on an injury in the performance of duty or sickness as a result of the performance of duty which allegedly occurred prior to November 20, 1989, the member shall comply with the terms of Section 4 of this procedure

within thirty days after the member is aware or should have been aware of the need to utilize GML 207-a benefits based on such prior injury or illness. Upon the filing of the Section 4 form, the claim for utilization of GML 207-a based on a pre-November 20, 1989 injury or illness shall be decided in accordance with the terms of this procedure. If there is a dispute as to the date of occurrence of the injury or sickness, the member shall have the burden of proof by a preponderance of the evidence that the injury in the performance of duty or sickness as a result of performance of duty occurred prior to November 20, 1989.

SAMPLE COPY

CITY OF YONKERS

FIRE DEPARTMENT

APPLICATION FOR GML 207-A
DISABILITY BENEFITS

Name of
Applicant: _____ Date: _____
Name of Party
Submitting Application: _____ Date: _____

I HEREBY APPLY FOR BENEFITS UNDER SECTION 207-A OF THE GENERAL
MUNICIPAL LAW BASED ON THE FOLLOWING:

A) Injury Sustained In the Performance of Duty

(In the space provided or on additional sheets if necessary,
set forth to the best of your ability information about the
injury including the date, time and place where the injury
occurred; a brief description of the nature and extent of the
injury; list the name and address of medical care providers
(including hospitals) who may have treated you to-date; and
include the name and rank of other department members who may
have witnessed the incident. Attach any available documents with
information relevant to the injury.)

B) Sickness As a Result of the Performance of Duty

(In the space provided or on additional sheets if necessary, set forth to the best of your ability information about the sickness including the date, time and place where the sickness in performance of duty occurred; a brief description of the nature and extent of the sickness; list the name and address of medical care providers (including hospitals) who may have treated you to-date. Attach any available documents with information relevant to the sickness).

I SUBMIT THIS APPLICATION PURSUANT TO THE POLICY AND PROCEDURE GOVERNING THE APPLICATION FOR AND THE AWARD OF BENEFITS UNDER SECTION 207-A OF THE GENERAL MUNICIPAL LAW. THE STATEMENTS CONTAINED IN THIS APPLICATION ARE, TO THE BEST OF MY KNOWLEDGE, ACCURATE AND TRUE.

(Signature of Applicant)

(Date)

The decision on my application should be mailed to me at the following address:

and to my representative:

Application Received By:

(Signature of Person Authorized
To Receive Application)

(Date)

CITY OF YONKERS
FIRE DEPARTMENT

TO: _____

YOU ARE HEREBY AUTHORIZED TO RELEASE TO THE CITY OF YONKERS
FIRE DEPARTMENT OR ITS REPRESENTATIVES INFORMATION, INCLUDING
PATIENT FILES, MEDICAL CHARTS, PHYSICIAN NOTES, X-RAYS, AND OTHER
PERTINENT INFORMATION, REGARDING MEDICAL OR OTHER REMEDIAL
TREATMENT PROVIDED TO ME IN CONNECTION WITH INJURY OR ILLNESS
DETAILED IN THIS APPLICATION.

Signature of Applicant
(Type or Print Name)

Date

STATE OF NEW YORK, COUNTY OF

ss:

On the _____ day of _____ 19 _____, before me _____ to
personally came and appeared
me known and known to me to be the individual described in and
who executed the foregoing instrument, and who duly acknowledged
to me that he executed the same.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

-----X

In The Matter of Compulsory
Interest Arbitration Between

MUTUAL AID ASSOCIATION OF THE
PAID FIRE DEPARTMENT OF THE
CITY OF YONKERS, NEW YORK, INC.
LOCAL 628, I.A.F.F., AFL-CIO,

CASE #IA 87-30;
M87-197

JS FILE #1338

Petitioner,

-and-

CITY OF YONKERS and THE NEW YORK STATE
EMERGENCY FINANCIAL CONTROL BOARD for
the CITY OF YONKERS,

Respondents.

-and-

THE NEW YORK STATE EMERGENCY FINANCIAL
CONTROL BOARD for the CITY OF YONKERS

Intervenor.

-----X

DISSENTING OPINION OF THE
EMPLOYEE ORGANIZATION PANEL MEMBER

I respectfully dissent from those portions of the Award which limit the wage increases for members of this bargaining unit to 4 1/2% in each of the two (2) years covered by the term of this Award, and which fail to grant to the Union certain of the other economic gains sought in its demands.

In 1984 a Declaration of Financial Emergency within the City of Yonkers was made by the State Legislature and the Governor. Specifically, the State Legislature enacted, and the Governor signed into law at Chapter 103 of the Laws of 1984, the New York State Financial Emergency Act of 1984 (hereinafter "1984 FEA").

Section 1 of the 1984 FEA sets forth, in part, the legislative findings which preceded the enactment. The State Legislature found as follows:

"It is hereby found and declared that a financial emergency and an emergency period exists in the city of Yonkers. This emergency has resulted because of inadequate management of the city's financial affairs, increased service demands of the population and short falls in receipts and anticipated revenues". (1984 FEA, §1, Emphasis added)

The instant interest arbitration is the first to arise under the Taylor Law in the City of Yonkers since the implementation of the 1984 FEA.

The controlling statutory criteria for interest arbitrations such as this one are found at §209.4 (v) a.-d. of the New York State Civil Service Law. These criteria are set forth at length in the majority opinion.

The pertinent sections of the 1984 Emergency Financial Act provide as follows:

Section 1 "Legislative findings and statement of purpose...This emergency has resulted because of inadequate management of the City's financial affairs...This situation creates a state of emergency. To bring the emergency under control and to respond to the overriding state concern described above, the state must undertake an extraordinary exercise of its police and emergency powers under the state constitution, and exercise controls and supervision over the financial affairs of the city of Yonkers, but

in a manner intended to preserve the ability of city officials to determine programs and expenditure priorities within available financial resources."

Section 4 (3) - "Nothing contained in this act shall be construed to impair the right of employees to organize or to bargain collectively." (Emphasis added)

Section 5 - "Power of city or covered organization to determine the expenditure of available funds. Nothing contained in this act shall be construed to limit the power of the city or a covered organization to determine, from time to time, within available funds for the city or for such covered organization, the purposes for which expenditures are to be made by the city or such covered organization and the amounts of such expenditures, consistent with the aggregate expenditures then permitted under the financial plan for the city or such covered organization."

Section 8 (3) (a) - "Notwithstanding the provisions or limitations of any law, general, special or local, including the charter of the city of Yonkers, an impasse panel, arbitrator, collective bargaining board, fact finding or similar type of panel, body or individual which is authorized to recommend or award an increase in wages or fringe benefits to any employee of the city or covered organization shall, in addition to considering any standard or factor required to be considered by applicable law, also take into consideration and accord substantial weight to the financial ability of the city or covered organization to pay the cost of such increase in wages or fringe benefits."

b. Any determination pursuant to article eight of the labor law or any agreement or stipulation entered into in lieu thereof which provides for an increase in wages or fringe benefits of any employee of the city or covered organization shall, in addition to considering any standard or factor required to be considered by applicable law, also take into consideration and accord substantial weight to the financial ability of the city or covered organization to pay the cost of such increase in wages or fringe benefits.

c. Any party to a proceeding before a panel, body or individual as described in paragraph a or b of this subdivision may commence a special proceeding in the appellate division, second department, supreme court, state of New York, to review the determination as to the city or covered organization's financial ability to pay. Such proceeding shall be commenced not later than thirty days after the final determination has been

made by the panel, body or individual. Such proceeding shall have preference over all other cases in such appellate division, other than cases relating to the election law.

d. The court shall made a de novo review of the record solely for the purpose of determining whether an award of an increase in wages or fringe benefits was within the city's or covered organization's financial ability to pay. The court's findings as to such issue shall be based upon a preponderance of all the evidence set forth in the record. Unless the parties stipulate otherwise, arguments or submission shall be had within fifteen days after commencement of the special proceeding and the court shall render its decision within fifteen days thereafter. All questions, other than the question relating to the determination, shall be reviewed by the appellate division in the same proceeding in the manner provided by article seventy-five or seventy-eight of the civil practice law and rules as may be appropriate, notwithstanding that the issue would otherwise have been cognizable in the first instance before a special or trial term of the supreme court. If an appeal shall otherwise lie from such determination of the appellate division to the court of appeals, notice of such appeal shall be filed within thirty days after the entry of the final order or judgment of the appellate division if such appeal is of right or within ten days after entry of an order granting leave to appeal, and such appeal shall have preference over all other appeals other than appeals relating to the election law.

e. At any stage of any proceeding under paragraph a, b or c hereof or any appeal from an order or judgment therefrom the board may intervene as a party on the issue of the financial ability of the city or covered organization to pay the cost of an increase in wages or fringe benefits.

f. For the purposes of this subdivision, financial ability to pay shall mean the financial ability of the city or covered organization to pay the cost of any increase in wages or fringe benefits without requiring an increase in the level of city taxes as approved in the financial plan of the city in effect at the time of the commencement of a proceeding under paragraph a or b hereof. (Emphasis added)

I acknowledge the State Legislature's caveat that a public arbitration panel such as ours must "also take into consideration and accord substantial weight to the financial

ability of the City...to pay the cost of such increases in wages or fringe benefits" (1984 FEA §8(h) (3) (a)). I also acknowledge that "financial ability to pay" means, for purposes of the 1984 FEA, an increase in wages or fringe benefits without requiring an increase in the level of city taxes approved in the financial plan of the City in effect at the time of the commencement of a proceeding such as this one (1984 FEA, §8 (f)).

I believe, however, that the City would place such emphasis on these sections as would have the practical effect of impairing the statutory rights of public employees to organize, and to bargain collectively, which is found in §203 of the Civil Service Law, and reiterated by the State Legislature within the 1984 FEA itself (1984 FEA, §4 (3)).

It would appear that the State Legislature, in recognition of the previously avowed public policy to permit public employees the right to organize and negotiate collectively, meant specifically to protect that right within the confines of the 1984 FEA.

Against this background, I submit that the State Legislature intended to vary, to a slight degree only, the weight to be accorded to the ability to pay criterion, which is part of the traditional Taylor Law criteria to be taken into consideration by a panel, such as ours, in its rendering of a just and reasonable determination of the matters in dispute between this public employer, the employee organization, and the New York State Emergency Financial Control Board, also a party to

these proceedings.

I find no evidence in either the voluminous record of testimony or in the many written exhibits submitted to this Panel to substantiate that the City of Yonkers has only the "ability to pay" 4 1/2% wage increases in each of the two (2) years. That is, I find nothing in the record which supports the proposition that an increase in wages in excess of the 4 1/2% provided for in the majority Award would require the City to increase the level of taxes which were approved in the financial plan of the City which pertains to these proceedings.

I recognize, of course, that the Panel has not accepted the City's position, and the majority does not hold, in its opinion, that 4 1/2% wage increases in 1987 and 1988 for the members of this bargaining unit constitute the limit of the City's ability to pay under any parameters.

The majority's conclusion is only that the City, on the record before us, is financially able to pay the 4 1/2% wage increase awarded. The majority does not conclude that increases in excess of those awarded, would be beyond the City's ability to pay.

I am constrained, however, to look to the other traditional Taylor Law criteria, in forming my opinion as to whether or not this Award, in fact, constitutes a "just and reasonable determination of the matters in dispute" between these parties, as that phrase is used in §209 of the Civil Service Law.

Foremost among these criteria in my mind, are the

comparisons of the wages, hours and conditions of employment of the members of this bargaining unit with the wages, hours and conditions of employment of other firefighters, and the terms of collective agreements negotiated between these parties in the past.

In 1985 and 1986 the members of this bargaining unit endured 3 1/2% wage increases while firefighters in comparable communities enjoyed wage increases of 6% and more. For 1987 and 1988, the years covered by this Award, the average base wage increases enjoyed by Westchester County's paid firefighters exceeded 6% (Union's exhibit 37).

The net practical effect of the 1984 FEA has been to call a halt to true arms' length collective negotiations between the employees of this City and their employer. The term "wage cap" has become a common part of the dialogue of Yonkers' workers. The City would have this Panel believe that the "cap" unilaterally imposed by either the Financial Control Board, the City of Yonkers, or both, somehow results from a "Compact" between the City and its municipal labor unions. Nothing in this record establishes the existence of a Compact. The Chairman of our panel recognizes that the City's interpretation of the Compact as an express agreement on economic benefits is in error, and that the Compact was not a enforceable contract. The Chairman quite properly couches this employee organization's position on the so-called Yonkers' Compact in two words: "What Compact?".

In my view, the testimony of the Union leaders involved in the rounds of negotiation between this employee organization and the City since the onset of the 1984 FEA, obviates any possibility that a Compact existed, at least with respect to this bargaining unit.

In fact, the testimony of the Union negotiators reveals only that they believed the less than average settlements which were negotiated, were the best that they could achieve under the circumstances. They never believed that the City could not pay more, even within the modified definition of "ability to pay" under the 1984 FEA.

The absence of a binding agreement between this union and the City to put in place less than average wage increases for 1987 and 1988, combined with the fact that this record does not support the proposition that wage increases in excess of 4 1/2% would fall without the City's ability to pay, even as that phrase is modified by the 1984 FEA, impels a result different from that reached by the majority.

The comparison of other comparable firefighter economic increases during the period of time covered by this Award substantiates economic increases for this bargaining unit in excess of 6% in each of the two years. Additionally, I would increase holiday pay by utilizing a twelve (12) hour day to calculate this benefit in place of the eight (8) hour day presently employed. The rationale is obvious. Firefighters do not work eight (8) hour days as do a majority of the other

members of the public sector. Rather the norm, as in Yonkers, is ten (10) hour days and fourteen (14) hour nights, for an average of twelve (12) hour tours. Holiday pay should be calculated accordingly.

So, too, with the computation of sick leave. As with holiday pay, the Union has demanded that this be computed on a twelve (12) hour day based upon the logic expressed above. I would award the Union this demand.

I would increase the variable benefit fund contribution to a percentage amount in excess of the 2.58% presently provided for.

The fact that Yonkers firefighters have endured less than average wage increases, results in their top pay being at a level less than could reasonably have been expected, prior to the enactment of the 1984 FEA. The contribution to the variable benefits fund, which is a function of the level of top pay, has suffered accordingly, and I would remedy this situation by increasing the percentage presently provided for.

Finally, I would note an attitude on the part of the City which pervaded these proceedings and which is punctuated by the City's characterization of the Union as "selfish", "nefarious" and "shockingly overindulgent". The City casts the Union as a labor organization which refused to accept a pattern of bargaining which, in the view of the City, is part and parcel of a "Yonkers compact" characterized by the City as a "glowing chapter in labor management relations". In short, the City seeks to castigate the Union before this Panel as a "pariah".

Putting aside the inflammatory nature of these characterizations, I feel compelled to respond to their substance.

The avowed public policy of this State and, indeed, the very purpose of the Taylor Law, is to promote harmonious and cooperative relations between government and its employees. In the view of the State Legislature, these policies are best effectuated by granting public employees the right of organization and representation; requiring local governments, such as the City of Yonkers, to negotiate with employee organizations, such as the petitioner herein; and encouraging public employers and employee organizations to agree upon procedures for the resolution of disputes.

In the area of collective bargaining between local employers and employee organizations, who represent members of an organized fire department, the State Legislature has established binding interest arbitration as the means to resolve impasses, such as the one that gave rise to this proceeding.

Perhaps the characterizations of the Union by the City emanate from the City's being frustrated by it's inability to dictate the terms of the labor agreement between the parties. Or, perhaps they result from the City's failure to recognize that in this arbitration the Union merely availed itself of the dispute resolution process which the State Legislature has put in place in the Taylor Law, and continued in the 1984 FEA.

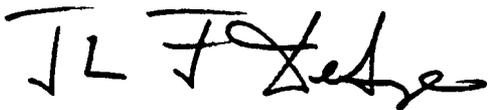
In either event, the characterizations display a fundamental

misunderstanding by the City of certain of the union's rights. Among these is the absolute right of the union to reject the employer's offer and follow the impasse procedures to arrive at a successor agreement.

In characterizing the Union as an outcast in the context of these proceedings, the City is misguided. The City would do well to recognize that, in large part, the responsibility for the state of financial emergency lies with it and results from its "inadequate management" of its financial affairs. One result of this financial emergency has been a series of financial plans which purport to limit wage increases for this Union's membership. The period from 1984 to present has been an economically difficult time for the City's employees and far from the "glowing chapter in labor management relations" which the City describes.

In opting not "to go with the flow", this Union's motivation was not selfishness. Rather, this arbitration was born of an attempt to take Yonkers firefighters beyond the confines of a unilaterally imposed economic cap. While this result has been achieved, to the extent that the award exceeds the 3.76% two year wage increase offered by the City, I nonetheless find the award insufficient for the reasons previously stated, and on this basis I dissent.

Dated: White Plains, New York
October 24, 1989


Thomas F. DeSoye
Employee Organization
Panel Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

-----X
In the Matter of the Compulsory
Interest Arbitration Proceeding Between

MUTUAL AID ASSOCIATION OF THE
PAID FIRE DEPARTMENT OF THE
CITY OF YONKERS, NEW YORK, INC.
LOCAL 628, IAFF, AFL-CIO,

Case Nos. IA87-30
M87-197

Employee Organization,

-and-

CITY OF YONKERS,

Employer.

-----X

EMPLOYER PANEL MEMBER CONCURRING OPINION

The instant compulsory interest arbitration is the first brought by an employee organization since the 1984 declaration of a financial emergency in the City of Yonkers. It also represents the first attempt by an employee organization to circumvent the limitations placed on collectively bargained wage and benefit increases by the FEA, the four year financial plan and the "Yonkers Compact" through the statutory dispute resolution procedures of the Taylor Law. While the award of the majority effectively thwarts this questionable effort, the critical importance of several of the issues presented in the instant matter to achievement of full financial recovery of the City of Yonkers requires the City Panel Member to clearly articulate the precise basis upon which he elected to concur with the award of the majority of the arbitration panel.

ABILITY TO PAY

The Financial Emergency Act of 1984 for the City of Yonkers (FEA) requires the public arbitration panel to "take into consideration and accord substantial weight to the financial ability of the city or covered organization to pay the cost of such increase in wages or fringe benefits". Financial ability to pay is defined in the FEA as "the financial ability to pay the cost of any increase in wages or fringe benefits without requiring an increase in the level of city taxes as approved in the financial plan of the city in effect at the time of the commencement of a proceeding." The Petitioner in the instant matter seeks wage increases far exceeding those provided for in the City's financial plan for the periods in issue and received by all other City unions in conformity with the Yonkers Compact. The City, on the other hand, maintains that the four year financial plan conclusively establishes the City's ability to pay wage and fringe benefit increases.

Rejecting the Union's request, the Impartial Chairman's decision awards the 4 1/2% increases on base pay received by all other City unions in conformity with the Yonkers Compact and approved by the New York State Emergency Financial Control Board (FCB), finding such increases to be within the City's ability to pay. While the City Panel Member concurs with this award, the importance of the ability to pay issue to the continuing financial recovery of the City of Yonkers and its relationship to

the four year financial plans promulgated in compliance with the requirements of the FEA compels the City Panel Member to articulate the rationale for concurrence with the determination of the majority.

Due to years of financial difficulties dating back to the mid 1970's, City financial affairs have been conducted within a labyrinth of statutorily imposed restrictions and limitations and the requirements of a statutorily imposed oversight board with sweeping powers. The objectives of this elaborate framework is the achievement of permanent financial stability in the City of Yonkers, and ultimately, the return to full financial autonomy. The key instrument in achieving these objectives is the statutorily mandated four year financial plans prepared by the City and approved by the FCB in connection with the annual budget process.

The four year financial plan represents the allocation of all of the City's resources to all of its known or reasonably anticipated expenses over a period of four years, utilizing accounting methods and assumptions specifically dictated by the provisions of the Special Budget Act and the FEA, and approved by the State Comptroller and the FCB. The City's compliance with the four year financial plan is monitored by the FCB through elaborate reporting and approval procedures. Virtually every financial transaction entered into by the City requires FCB approval for compliance with the four year financial plan. The

FEA vests the FCB with broad remedial powers for non-compliance, including taking over the day to day financial operations of the City and the imposition of a wage freeze on all employees. The FCB has exercised these powers in the past in connection with the federal housing litigation.

Pursuant to the requirements of the FEA and the Rules and Regulations of the FCB, all collective bargaining agreements entered into by the City since enactment of the FEA have been subject to approval by the FCB. Pursuant to the FEA, the FCB is required to reject any contract that does not comply with the four year financial plan in effect. In accordance with this requirement, the FCB has rejected several proposed collective bargaining agreements which exceeded the aggregate cost provided for them in the four year financial plan. In each such instance, the proposed agreements exceeded the cost pattern established by the Yonkers Compact.

The four year financial plan requires the City to continuously analyze its financial situation from a four year perspective. The purpose of the plan is to require the City to consider and recognize the future costs of service expansion and other expenditures such as wage and benefits in the allocation of present resources. Thus, while a surplus may in fact exist in a given year, a look around the corner at the following years in accordance with the requirements of the FEA may well reflect budgetary gaps to which the surplus must be committed. An

excellent statement of this basic principle is set forth in the January 30, 1987 modification to the financial plan (City Exh. 72). It states in pertinent part:

An imbalance between resources and service demands for both the municipality and educational system created the fiscal crisis of 1984. The budgets adopted for fiscal years ending 1985, 1986 and 1987 have produced financial stability. In fact, budgetary surpluses have been utilized or have been planned as resources to mitigate the projected imbalance of revenues to expenditures over the periods covered by the plan. However, overconfidence and a short memory could become the greatest potential problems to the City, in not addressing the prudent use of scarce operating resources and generating sufficient revenues when the need is clear and immediate to the long-term financial stability of this City.

The budget surpluses pointed to by the Union, in effect, do not exist and are certainly not available for wage and fringe benefit increases. As explained by both City and FCB officials, virtually every penny of surplus is committed to future City obligations reflected in the four year financial plan. Thus, the Union's position advocates ignoring the clear and unambiguous requirements of the FEA and returning to the short-sighted practices that twice brought the City to the brink of bankruptcy.

The four year financial plan represents a statutorily mandated expression of the interest and welfare of the public under the financial emergency, ascertained through an elaborate statutorily mandated process, and approved by two oversight

agencies. It is clear that the City's financial ability to pay in the instant proceeding is conclusively established by the City's four year financial plan in effect for the period covered by the arbitration proceeding. The fragile balance reflected in the financial plan cannot be upset by the self-serving objectives of a single employee organization dedicated to achieving substantially higher increases and wages and fringe benefits than anyone else received. The arbitration panel is without jurisdiction or authority to make such a determination, and any such determination would put the panel squarely at odds with the statutory oversight agency created to supervise the City's finances. Even if it were possessed with such authority, the exercise of such authority in the manner requested by the Union would be completely unreasonable and irresponsible under the facts presented.

The 1987-91 four year financial plan was the first balanced plan for the City since the declaration of the financial emergency. A key component of the plan was the successful achievement of four year collective bargaining agreements, each incorporating the cost pattern of the second round of the Yonkers Compact - 4 1/2% increase on base pay - which was consistent with the parties' pre-established determination of ability to pay. Because Petitioner failed to ratify the four year agreement executed by its officers, the 1987-91 financial plan continued the terms of the original Yonkers Compact cost pattern - 4 1/2%

total cost increase (approximately 3.76% on base pay) with respect to Petitioner's members.

From a purely technical standpoint, it would have been appropriate for the Panel to award the 4 1/2% total cost increase package actually provided for in the financial plan. However, in view of the fact that the lower amount was reflected only due to the Petitioner's failure to ratify the 4 1/2% increase on base pay agreement received by all of the other municipal unions, along with the testimony of FCB officials that such increases would be within the City's ability to pay, and in the interest of harmonious labor relations, the City Panel Member has agreed to the award of the higher amount represented by the 4 1/2% increase on base pay.

THE YONKERS COMPACT

The second major issue presented by the instant arbitration was the import of the so-called Yonkers Compact. The decision of the Chairman describes the Yonkers Compact as a "general understanding impelled by irresistible forces of political and fiscal necessity." Determining the Yonkers Compact to reflect "the context in which all felt in good faith that the crisis could be weathered", the Chairman imposed the pattern established by the Yonkers Compact for the two years of the Panel's jurisdiction under the Taylor Law. While the City Panel Member concurs in principle with the imposition of the Yonkers Compact

for the two years of the Panel's jurisdiction, the City Panel Member believes that due to the Panel's jurisdictional incapacity to impose the true pattern of the Yonkers Compact - 4 1/2% increase on base pay for four years, it would have been more appropriate for the Panel to have awarded the terms of the original compact - 4 1/2% total cost increase for two years (3.76% on base pay). Such finding would in fact be supported by the evidence on comparability with salary and compensation received by firefighters in other jurisdictions and by the evidence on economic factors submitted to the panel in this proceeding.

While there was obviously no written agreement called the Yonkers Compact, it is equally obvious that for the period 1984 through the present, the City and its municipal unions have banded together to create pre-established cost limitations on the bargaining of the individual collective bargaining units within the parameters that all parties, including the FCB, determined to be the City's ability to pay. First in 1984, and then again in 1986, the Yonkers Compact cost pattern represented shared recognition by municipal employees of the City's financial condition. It contributed to the overall spirit of teamwork that was essential to Yonkers' survival. This coordinated approach indicated to the taxpayer that the employees and their unions were all dedicated to the City's financial recovery.

Over the years of the financial crisis, the Yonkers Compact has played a central role in bringing financial stability to the City. The history of the financial crisis presented by City witnesses clearly reinforced the existence, both in 1984 and 1986, of a pre-established consensus between the City, the FCB and the municipal unions concerning an outside limitation on the amount of wage and fringe benefit increases. In 1984, it facilitated the obtaining of additional aid required to avoid bankruptcy. During the same period, it was instrumental in avoiding the imposition of a wage freeze. In 1986, it facilitated the early extension of the income tax surcharge, avoiding yet another wage freeze and substantial service cuts.

The amount of the increases, in fact, represented a consensus between the City, the State and the municipal unions as to the City's ability to pay. While individual agreements may have varied as to application, each agreement's economic terms reflected the cost pattern mandated by the Yonkers Compact.

Once incorporated into the four year financial plan, the cost pattern of the Yonkers Compact became the yardstick by which each agreement was measured for compliance. To the extent that any agreement failed to comply, such agreement was rejected by the FCB. In this regard, both City and FCB witnesses testified that any agreement which exceeded the terms of the Compact incorporated into the four year financial plan had to be analyzed for both the cost of the spill over effect to other labor unions.

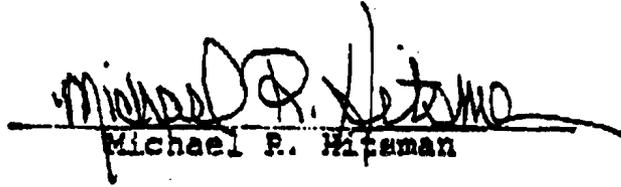
The FCB Executive Director, in particular, pointed out that it was reasonable to expect that if one union exceeded the four year plan guidelines, other unions would demand similar wage packages. It is the concept of "all for one" that is at the heart of the Yonkers Compact.

Petitioner in the instant matter chose not to ratify the four year collective bargaining agreement incorporating the terms of the Yonkers Compact (four years at 4 1/2% increases on base pay) negotiated by its collective bargaining team and executed by its president. Instead of accepting the wage pattern accepted by every other union, it elected to seek substantially higher increases, totally inconsistent with both the terms of the Yonkers Compact and the four year financial plan. By doing so, the Union has effectively circumvented the ability of the Panel to impose the appropriate award in the instant manner - a four year agreement at 4 1/2% increase on base pay due to the jurisdictional limitation on the Panel to only award two year agreements.

As established by the testimony of City witnesses, the 4 1/2% increase on base pay was expressly conditioned upon four year agreements. The difference between 4 1/2% on base pay and 4 1/2% total cost increase was expressly predicated on the extra two years of the agreement. Both the City and the municipal employee unions waived the opportunity to negotiate better terms in the intervening years so as to accomplish extension of the

the four year financial plan and recognizes and imposes the
Yonkers Compact, the City Panel Member concurs in the award.

DATED: October 31, 1989


Michael R. Hifaman