



parties engaged in three subsequent mediation sessions, the last of which took place in October of 1994. Having failed to resolve their differences through mediation, the Union filed a petition for Interest Arbitration in November of 1994 with Rochester filing its response in December of 1994. The City also filed Improper Practice charges (I.P. Charges) with PERB alleging that 17 of the 57 items of impasse involved non-mandatory subjects of bargaining. In conference with a PERB Administrative Law Judge, the parties agreed to return to the negotiating table to try to reach settlement prior to arbitration and three more meetings took place. All items of impasse, including those involved in the I.P. Charge, were discussed. Subsequently, the parties participated in Interest Arbitration hearings at the Holiday Inn in Rochester, New York on October 16, 17 and 18, 1995 in the course of which impasses involving provisions of 8 Articles and 23 Sections of the expired Agreement were placed before the Panel for resolution. The parties were afforded unrestricted opportunity to present testimonial and documentary evidence, examine and cross examine witnesses and offer arguments in support of their respective positions. Both parties were represented by counsel and neither questioned the fairness or completeness of the hearings. At the conclusion of the hearings, the parties opted to file and exchange post hearing briefs by November 13, 1995 and did so in a timely manner.

The Panel met in Executive Session at the Marriott Hotel in Syracuse, New York on December 27 and 28, 1995 and via phone on January 6, 1996, at which time it fully reviewed all evidence and

arguments deemed to be relevant in the light of its statutory obligations. In the course of these deliberations, the Panel members accepted many compromises at the urging of the Chairperson. Each of the Panel Members vigorously dissented from individual recommendations but at least two of us were in agreement on each item and the Panel weighing the document as a whole concurs in the award. References to "The Panel" in this Opinion and Award shall be understood to mean the Panel Chairman and at least one other Panel Member.

Appearances were as follows:

**FOR THE UNION:**

Jules L. Smith, Esq.	Attorney
Harry B. Bronson, Esq.	Attorney
James A. McTiernan III	Secretary Local 1071
Joseph Candalaria	Battalion Chief Representative of Local 1071
Joseph Montesano	Vice President Local 1071
Kenneth R. Gippe	Group 4 Trustee Local 1071
John A. Parente	Staff Representative IAFF
Gary J. DiNoto	Trustee Group 3 Local 1071
Ernest G. Miller	President Local 1071
Edward Fennell	Economic Consultant to the Union - Witness

**FOR THE CITY OF ROCHESTER:**

Yvette C. Green, Esq.	Municipal Attorney
William Ansbro	Budget Analyst City of Rochester
David L. Griffith	Fire Chief Rochester Fire Department
Thomas Dillon	Temporary Executive Chief Rochester Fire Department
Renee Baker	Director, Bureau of Employee Relations City of Rochester
Donna Turner	Sr. Personnel Analyst City of Rochester
Richard W. Hannon	Budget Director City of Rochester - Witness
David Weisensel	Deputy Chief Rochester Fire Department - Witness
Nancy Abrams	Personnel Management Consultant to City of Rochester - Witness

The Panel was charged with making a just and reasonable determination of all issues before it for two contract years commencing July 1, 1993 and expiring June 30, 1995. Subsequently, the parties voluntarily extended the Panel's jurisdiction to include two additional contract years commencing July 1, 1995 and concluding June 30, 1997. This award therefore sets the terms of a successor Collective Bargaining Agreement for four (4) years commencing July 1, 1993 and expiring June 30, 1997. (Appendix I)

Pursuant to New York State Civil Service Law 209.4(c)(v), the Panel considered all relevant factors and heeded the specific instruction to consider the following:

- A. comparison of wages, hours and conditions of employment of the employees involved in the Arbitration Proceeding with 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 interest 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 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.

Both parties submitted numerous and voluminous exhibits and documentation of their positions, more detail identification of which herein would serve no useful purpose.

## **II. OPINION**

Both parties subscribed to the concept that a just determination should build on preserving or establishing parity between the terms of employment and compensation of Rochester

Firefighters and others. The difference arises not only as to who the "others" should be but also what terms and conditions should be considered and which fall without the ambit of parity considerations. The Union maintains that salary parity should be built on a comparison with Firefighters in what it deems to be comparable cities as well as with the Rochester Police and it believes further that workload or productivity considerations must be factored in by paying Rochester Firefighters a premium above the equivalent rank rate of the City's Law Enforcement personnel in recognition of putative higher skill, workload or productivity demands and work hours in the Fire Department. The City, on the other hand, sets forth in its Exhibit 56 a history of annual increases awarded Rochester Police and Rochester City AFSCME employees at roughly equivalent skill grades arguing that the justification for increases to Firefighters must be considered relative to both those awarded their fellow public safety employees in law enforcement and other City employees, such as those in the AFSCME bargaining units. The City further argues that parity does not involve achieving absolute equality in hours worked or in overtime opportunities offered employees in different groups.

The Panel concurs in the view that local practice must be accorded substantial weight, particularly with respect to the terms and conditions enjoyed by the Rochester Police Unit. Comparisons with communities like Jersey City in New Jersey, Newark, New Jersey and Yonkers, New York are not persuasive as these jurisdictions are both geographically and economically separated from Rochester. The

Bureau of Labor Statistics has historically placed them in different Standard Statistical Market Classifications.

The productivity argument is both intriguing and complex. Productivity classically define unit output per unit of input. When the output is in units of product, like cans of soup or reams of paper, the designation is straightforward. However, in the case of public safety employees, the determination is less clear. If the function of the Fire Department is to prevent fires, a reduction in the number of responses would be interpreted as an increase in productivity while an increase in the number of responses would be interpreted as a decrease in productivity. If, on the other hand, the measured product is the number of fires suppressed per Firefighter over a given period of time, the productivity would be viewed as rising or falling in the lock step with the number of responses. Changes in the denominator also alter the outcome. A decrease in staffing, all other factors remaining equal, would ordinarily denote an increase in labor productivity but if one considers the possible impact of deployment changes or new technology, it is not inconceivable that such productivity improvements may be achievable through changes in methodology rather than the quantum of Firefighters' responsibilities. If, as a hypothetical example, a higher level of training and a higher frequency of application of fire prevention inspections materially reduces the number or severity of fires, one must develop some sort of work measurement calculus to determine whether more time and effort spent in prevention activities represents a greater demand

than less frequent but more strenuous fire suppression activities. These analyses are further complicated by productivity quotients based on dollars of output per dollar of input. An enterprise which reduces its labor costs by substituting capital equipment for labor does so in the expectation that its labor costs and savings will exceed its equipment and apparatus costs per unit of product. Situations in which an enterprise experiences substantial tooling cost overruns with the resulting rise in labor productivity and drop in dollar based productivity are not unheard of.

Even if we were qualified to offer a treatise on productivity measurement in Firefighting, it would be of limited utility here as even a showing of increased productivity would not resolve the philosophical question of how it entwines with compensation. We do not subscribe to the view that any presumed productivity improving departure from past practice standing alone, necessarily justifies an increase in compensation. Past practice is a meaningful reference point but it is not necessarily an immutable limit. Parenthetically there is no reason to presume that some of the referenced comparable jurisdictions had not achieved productivity improvements as well. The American Labor Movement as a whole has generally long argued that productivity improvements provide non-inflationary resources for funding salary increases though its emphasis has been on salary increases in excess of those required to keep abreast of changes in the Consumer Price Index (CPI). Increases to offset CPI increases have been sought after even where resultant price increases were predictable.

These broad considerations were weighed in the Panel's deliberations wherein we concluded that major emphasis properly continued to reside in the traditional parameters employed in fixing the terms and conditions of Rochester Public Safety personnel including the Employees whose concerns are being evaluated in the matter at hand.

**1. Salary Schedule, ARTICLE 2, Section 1.**

The Panel has determined that the City's proposal to adopt an entry level starting salary of \$26,000 per annum for the life of the Agreement should be sustained. One justification for the proposal offered by the Employer is for continued adherence to a starting pay parity relationship between the City's Firefighters and Law Enforcement personnel. The adoption of a \$26,000 starting salary is consistent with that objective. The City's further proposal to add a fourth step to the salary progression and extend the time span from the entry to the highest step to four years, as opposed to the traditional three step advancement to the maximum over a period of two and one-half years, was found to be reasonable when coupled with other proposals and was similarly adopted. We will award for the implementation of a \$26,000 per annum entry level compensation to prevail for the life of the Agreement with the new recruit continuing to advancing to Step 1, Step 2, Step 3 and Step 4 of the salary schedule at 6, 18, 30 and 42 month service levels respectively. We have similarly adopted the City's proposal for percentage salary

increases effective July 1, 1993 and July 1, 1994 on the basis of its own assertion that they had already been provided for in the budget and were consistent with those granted to the Law Enforcement Unit. We have similarly adopted percentage increases equivalent to those established for the Law Enforcement Unit effective July 1, 1995 and July 1, 1996 respectively preserving the parity arrangement between the two public safety groups. These increases are as follows.

<b>Effective July 1, 1993</b>	<b>+2.5%</b>
<b>Retroactive to July 1, 1994</b>	<b>+3%</b>
<b>Retroactive to July 1, 1995</b>	<b>+1%</b>
<b>Effective July 1, 1996</b>	<b>+2.5%</b>

The implementation of these adjustments will revise **Article 2, Section 1** of the expired Agreement to read as follows in the successor Agreement:

Employer, the Panel concludes this section as it appeared in the expired Agreement should be preserved in the successor.

**ARTICLE 2, Section 6 - Night Differentials**

Night differentials are a part of the members compensation and were at a level of \$.50 per hour in both Public Safety Departments where equivalency has traditionally prevailed. The Panel, in deference to the established or traditional equilibrium, concludes that the differential should be increased to \$.60 per hour effective retroactively to July 1, 1995.

**ARTICLE 2, Section 7 - Parity Allowance**

The Union has petitioned for a salary increase of 6.4% effective July 1, 1993 arguing that 2.5% of this is justified by a similar increase of that amount awarded to Law Enforcement Employees. The additional 3.9% is sought as compensation for disparity in hours worked. The Panel's views respecting the productivity question has been set forth supra. We believe inherent differences in the character of the work have traditionally and will continue to render efforts at exacting measures of comparable worth unproductive. However, effective January 1, 1996, a new work schedule will be implemented for the Law Enforcement Employees in the form of a reduced work week. This represents a significant and definable departure from traditional practice in the Rochester jurisdiction. What constitutes significance is of course judgmental but we can not subscribe to the

**SALARY SCHEDULE****EFFECTIVE 7/1/93:**

<b>BRKT/STEP</b>	<b>Start</b>	<b>STEP 1</b>	<b>STEP 2</b>	<b>STEP 3</b>
80	28,355	33,355	38,243	40,136
82			43,788	45,956
84			49,516	51,966
85			55,874	58,639

**EFFECTIVE 7/1/94:**

<b>BRKT/STEP</b>	<b>Start</b>	<b>STEP 1</b>	<b>STEP 2</b>	<b>STEP 3</b>
80	29,206	34,356	39,390	41,340
82			45,102	47,335
84			51,001	53,525
85			57,550	60,398

**EFFECTIVE 7/1/95:**

<b>BRKT/STEP</b>	<b>Start</b>	<b>STEP 1</b>	<b>STEP 2</b>	<b>STEP 3</b>
80	29,498	34,700	39,784	41,753
82			45,553	47,808
84			51,511	54,060
85			58,126	61,002

Effective the issuance of the award, add a new, additional salary step which shall be the new Start step of \$26,000 for the life of the award.

**EFFECTIVE 7/1/96:**

<b>BRKT/STEP</b>	<b>START</b>	<b>STEP 1</b>	<b>STEP 2</b>	<b>STEP 3</b>	<b>STEP 4</b>
80	26,000	30,235	35,568	40,779	42,797
82				46,692	49,003
84				52,799	55,412
85				59,579	62,527

**ARTICLE 2, Section 4 - Differentials**

The City has sought elimination of the contractually defined differentials on the basis that percentage increases will preserve the established differentials in any event. While it is apparent that this is the case, the language of the expired Agreement serves to clarify and define the arrangement and as its retention is without cost to the

Employer argument that differences in work hours are excludable in evaluating parity. While it is true that Public Safety Employees are not paid on an hourly basis, it is equally true that one would not consider two employees receiving the same annual salaries where one is assigned to duty for hypothetically 40% more hours than the other, as enjoying parity compensation. The actual difference here is, of course, much smaller but nonetheless is equivalent to a 2 1/2% salary differential. Moreover, it seems a reasonable inference that the adoption of that work schedule in the Law Enforcement branch was a factor in fixing the salary increases awarded for the third and fourth years of that Agreement, the magnitudes of which have been adopted in the matter at hand. Consequently we think it abundantly clear that an equitable solution must give weight to that work week adjustment to preserve parity. Accordingly, we will award a Parity Allowance equal to 2.5% of base salary inclusive of the Educational Incentive (**Article 16, Section 3**) effective January 1, 1996. The allowance shall be paid in a lump sum no later than February 15 following the calendar year in which the allowance is earned.

**ARTICLE 2, Section 9 - Manning**

The Union has proposed adoption of a new section which would in effect provide for penalty payments for claimed increases in workloads where work crews at fire scenes are

allegedly undermanned. The Panel believes this is a safety issue which can not and should not be addressed by consideration of a penalty pay provision. Such arrangement suggests that Firefighters may at the Employer's behest, and upon payment of what is in effect a licensing fee, be exposed to unreasonable risks. The record strongly suggests the Members themselves are opposed to such an arrangement in principle and their motivation in advancing the proposal is apparently to utilize the financial penalty as a goad to induce management from engaging in certain alleged hazardous practices. Appropriate practice standards and methods for insuring adherence thereto are proper considerations for the Safety and Health Committee and we remand the issue to their considerations in this proceeding.

**ARTICLE 5, Section 2 - Sick Leave**

The City has proposed amendment of the language of this provision as it relates to the requirement for Doctor's Certifications and the obligations of Employees on sick leave.

The Panel found the City's proposals for modifications to Paragraphs A, B, C.1 and C.2 respectively of the expired Agreement to be acceptable as proposed but did modify its proposal requiring the production of a physician's certification, which was identified as Paragraph C.3.

Paragraph E as proposed by the Employer was similarly accepted, but its proposal for a Paragraph F was denied on the basis that the Employer is afforded other means of relief through the disciplinary process.

ARTICLE 5, Section 2 as it appears in the successor Agreement shall state as follows:

- A. Any members of the unit who are unable to perform their job duties as a result of an illness or injury and cannot report to work as scheduled shall (a) notify his immediate supervisor more than 1 hours prior to the start of his scheduled shift, if possible, and (b) notify the office of the physician(s) designated by the Employer.
- B. Any member who has been off duty for any length of time as the result of any illness or injury and is returning to duty shall notify his immediate supervisor or designee at least two (2) hours prior to the start of the shift.
- C. Members off duty as a result of any illness or injury shall be allowed to return to duty subject to the following:
  - 1. Members who are off duty for any length of time due to an injury shall be required to produce a return to duty certificate from a physician(s) appointed for that purpose by the city, before returning to duty, unless waived by the Fire Chief or his designee.
  - 2. Members who are off duty due to an illness for more than two (2) working days shall obtain a return to duty certificate from

a physician(s) appointed for that purpose by the City, before returning to duty, unless the requirement of the certificate is waived by the Fire Chief or his designee.

3. Members who are off duty due to any illness or injury for more than three (3) consecutive working days shall produce a certificate of treatment from a licensed physician unless waived by the Fire Chief.

D. The certificate of treatment shall include a diagnosis, dates of visit(s), dates of work disability, any restrictions upon return to work and the signature of the treating physician.

E. At the Employer's discretion, any member may be required to report for a medical examination to a physician(s) designated by the employer for the purposes of verifying a claim of illness or injury or to verify the member's ability to perform the essential functions of the job. The costs of any such examination shall be borne by the Employer.

**ARTICLE 5 Section 3 - Obligation of Employee on Sick Leave**

The City has proposed the additions of paragraph B, C and D to this provision. Paragraph B would exempt disabled persons as determined by the Fire Chief from the obligations. Paragraph C provides that the Fire Chief may waive the

requirements at his sole discretion. Paragraph D defines normal duty hours. We find these additions to involve a certain amount of redundancy or to address concerns with which we are involved in treating with **ARTICLE 32, Section 4 - 8B-5 Status**. The Panel therefore concludes that the City's petition to modify **ARTICLE 5, Section 3** of the expired Agreement should be denied.

**ARTICLE 9, Section 1 and Section 2 - Health Insurance**

The City has proposed several changes, the first of which would involve requiring the Firefighters to contribute to the cost of health insurance coverage. On a weighted average of all plans and coverage levels, that contribution would amount to nominally 16% of the premium (Employer post hearing brief, Page 26). In support of its proposal, the City cites the practice in other Rochester units where the Police pay 7.5% of their Blue Cross Blue Shield Blue Million Plan coverage and where AFSCME Employees pay up to 25% of the cost of their coverage.

The Firefighters maintain the Employer's cost for their coverage without contributions from the Firefighters is in fact lower than that of the Police Unit even after the Policepeople's contribution because the latter are beneficiaries of a more expensive program.

The City has also proposed a change in existing coverage to less costly plans, that it be limited to paying 85% of the cost of the monthly premium of the least expensive HMO

coverage with the Employee making up the difference on a monthly payroll deduction basis and that the health maintenance organization provision **ARTICLE 9, Section 3** of the expired Agreement be deleted.

The Union has proposed two major changes in this Article, the first of which would be the deletion of **Section 4, A.3 - Coverage for Retired Members**, of the expired Agreement. This provision provides that a member who is eligible for group medical insurance coverage through another employer or his spouse's employer be required to accept that coverage and relieve the City of the obligation of providing it. The Union argument in support of deletion is that the Firefighters spouse's coverage may be inadequate and that the Union members should not be forced to accept substandard coverage. It further argues that the clause as written affected less than a dozen members since its adoption and that the impact on the City has been minimal. The City, in its post hearing brief, (Page 27) incorrectly argues that the City is paying for 100% of the retirees health insurance costs until he or she reaches age 65. In point of fact, pursuant to **Article 9, Section 4.E** - retired members with less than 35 years of service contribute 5%, 10% or 15% of the cost of coverage, depending upon their years of service.

The Union further proposes the addition of a **Section 9** which would provide that active members partaking of alternative coverage would share in the City's savings by

becoming beneficiaries of a \$1,500 per annum payment prorated for the months of the year during which the Employer did not provide coverage to be payable at the conclusion of a contract year. The Union asserts this would provide the City with the greater share of the saving. The City, on the other hand, asserts if any considerations to be given the proposal, it properly should be done in conjunction with the imposition of a requirement to contribute to the premium cost thereby setting up the elements of a marketplace determination by the Employees.

The Panel has compared the Police and Fire health insurance coverage and costs by calculating the theoretical cost of the coverage provided the Firefighters utilizing the Police manpower and coverage elections set forth in Employer Exhibit 37. We find that part of the cost differential cited by the Employees is attributable to more costly coverage. To some further extent, costs are differentiated because of differences in the choices of coverage. However, even if the Police coverage were the equivalent of the Firefighters plan, Rochester's cost for their coverage, after the 7 1/2% contribution, would continue to be nominally 3.5% lower than its current cost for Firefighter coverage. Accordingly, the award will provide:

- (1) Effective January 1, 1996, employee contributions from all members electing health insurance shall be three and one-half percent**

(3.5%) of the cost of the coverage as provided in Section 1.

- (2) As the calculations underlying the determinations in (1) presumed detention of ARTICLE 9, Section 1 and ARTICLE 9, Section 3 as they appeared in the expired Agreement, its petition to delete or change these items is denied. Similarly, since Section 4 E.3 is a cost item, the Union petition for its deletion is denied.

**Article 9, Section 9 - Alternative Coverage**

The Panel has determined that the adoption of an alternative coverage option similar to that proposed by the Firefighters will be beneficial to both parties and the award will therefore provide for the inclusion in the successor Agreement of an **ARTICLE 9, Section 9 - Alternative Coverage**, which will provide as follows:

- A. Effective 1/1/96, all those who accept health insurance coverage from a source other than the City of Rochester shall receive \$1,000 per annum, prorated by month, based on the City's fiscal year, payable by September 1 for the preceding fiscal year. If 7.5% of the unit members accept this option by June 30th of any year, the payment shall increase to \$1,500 per annum. If less than 7.5% of the membership

accept this option the rate shall be \$1,000. Application shall be made on a form provided by the employer, attesting to and identifying the alternative coverage.

- B. Initial application may be made at any time during the 95-96 fiscal year. Subsequent applications shall be made for the following fiscal year at the same time as "open enrollment" for health insurance.
- C. Re-enrollment in City Coverage is permitted during the year in the event of a change in family status or loss of alternative coverage.

**ARTICLE 14, Section 1 (Work Schedule)**

The Union has proposed retention of this provision with a modification which would provide for contractually defined work hours for staff employees. The question of staff assignments has been and continues to be discussed between the parties and the Panel will contest this issue by remanding it to the parties for continued and/or further discussion with a view toward resolving the matter or presenting to the Panel an updated set of alternatives on which it may base a decision by April 15, 1996. The Panel will retain jurisdiction over this item for that purpose.

**ARTICLE 14, Section 3 - Cycle Time**

The Employer has proposed deletion of this article which obligates it to reschedule Cycle Time where a member suffers

an illness or off duty injury which would place him on sick leave during that period. The Employer argues that Cycle Time is like any other non-work time, such as a weekend, but an employee who falls ill during a weekend does not presume an entitlement to scheduling of additional days off in compensation for the weekend of illness. The Union argues that the Employee is entitled to sick time for the Cycle Time days and that the Employer is in effect seeking to compel the use of earned Cycle Time days as an offset against the Employer's obligation to provide sick time.

While the Panel agrees that Cycle Time is in some ways distinguishable from a weekend, it also recognizes that an Employee who takes sick while off duty does not become entitled to sick pay for such a date. We do however conclude that Cycle Time is not intended to be a substitute for sick leave time and conclude that an appropriate balance of the merits of the positions of each of the parties will be achieved by revising **ARTICLE 14, Section 3** to state as follows:

**Whenever a member has scheduled Cycle Time and has suffered an illness or off-duty injury which placed him on sick leave prior to the conclusion of his last regularly scheduled shift preceding the scheduled Cycle Time, his/her Cycle Time shall be rescheduled. All sickness and off-duty injuries pertaining to this section shall be verified by a**

doctor's certificate. Members will forfeit such time if they fail to produce a doctor's certificate.

**ARTICLE 17, Section 4 - Assignment to Education Classes**

The Panel supports the Union proposal that members be paid at the rate of time and one-half their regular rate for required attendance at educational classes outside their regular scheduled work period. However, it supports also Rochester's position for a provision permitting temporary changes in work schedules enabling the educational activities to be conducted within a regular length work day. Accordingly, in the successor Agreement, **Article 17, Overtime, Section 4 - Assignment to Fire Related Educational Classes** shall state:

Members who are assigned by the Fire Chief to attend Fire Service related educational classes outside, and in addition to, their regularly scheduled work period shall be paid at the rate of time and one-half. This shall not apply to instances where the member's work schedule has been changed to accommodate the schedule of the training.

**ARTICLE 17, Section 6 - Fire Safety Overtime**

The Union has proposed retention of the language but a change in the title to establish that the provisions thereof apply to both Fire Safety and other staff overtime and line

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overtime. The Panel has determined that **Article 17, Section 6** of the expired Agreement should be preserved in the successor and addresses the matter of line overtime in a new provision, **Article 17, Section 7**.

**ARTICLE 17, Section 7 - Line Overtime**

The Panel has created a new Article largely codifying past practice respecting line overtime. The Union has sought changes because it perceived that overtime opportunities were being inequitably distributed. While the Panel was unable to determine that that was in fact the case, it does recognize that perception is often reality and it has devised a systematic procedure for distributing general overtime which should be indisputably free of bias. This system provides for the establishment of lists to be employed in offering general overtime assignments for each group and rank pursuant to the terms of **ARTICLE 17, Section 7** which shall state:

- A. Selection for overtime for general overtime assignments shall be from lists organized by seniority in title, by battalion and group. There shall be separate lists for day and for night overtime. There shall be a separate division-wide list for Haz-Mat overtime and separate Holiday lists by group. There shall be a separate division-wise list for Battalion Chiefs. A member working the non-group**

schedule may be added to only one Battalion/Group list.

- B. When overtime needs arise the Chief or his designee shall start at the top of the appropriate list and proceed through the list. Members shall have two opportunities for refusal, at which time no further overtime will be offered until the creation of a new list. A list will be retired and new list created after each member on the list has worked two overtimes or has refused two opportunities.
- C. Where there are lists by Battalion within the Group. Overtime shall be offered within a Battalion list first. When all the members in a Battalion list have worked two overtimes or have refused two overtime opportunities, overtime will be offered to members of other Battalions until everyone in the Group has worked two overtimes or have refused two overtime opportunities, at which time the Battalion/Group list shall be retired and a new list created.
- D. A list of the members who have worked general overtime assignments shall be published weekly and distributed to the fire houses.

- E. Overtime requiring specializations or special qualifications shall continue to be managed by the Fire Chief or his designee.**

**ARTICLE 17, Section 7 - Compensatory Time.** The Union has sought a provision which would permit members in line assignments to accrue compensatory time in lieu of overtime payments at the overtime rate. The Panel has denied this proposal in substantial measure because it would impose an economic penalty on the Employer as double overtime penalties would be involved; one to the member accruing the compensatory time, as expected, and one to the individual covering for that person when the compensatory time is redeemed.

We have however found merit in the Union argument that line employees should not be denied an opportunity to accrue a modest accumulation of compensatory time to be drawn against in an emergency situation. Consequently, we do award for the addition of a Paragraph D to **ARTICLE 17, Section 7** which shall state as follows:

- D. Members working the group system shall be allowed to work whole Cycle Time days or nights and shall be compensated with compensatory time at the straight time rate, in lieu of overtime, with accruals to be limited to a maximum of 42 hours. Members working the group system may use**

**compensatory time only in cases of  
emergencies approved by the Fire Chief.<sup>1/</sup>**

**ARTICLE 17, Section 8 Assigned Standby**

The Union has proposed payment to certain individuals who carry pagers and have the use of a Fire Department vehicle so they may be promptly recalled to duty and brought to the scene of emergency should it be required. In the Panel's view, this obligation is limited to a relatively few individuals, seven in number (Employer Exhibit No. 8) all of whom occupy responsible positions. We think it entirely appropriate, particularly in a Public Safety venue, to expect individuals to be recallable when an emergency requires their presence and we view the pager as nothing more than an efficient substitute for requiring people to leave phone numbers and the Union's demand is therefore denied.

**ARTICLE 17, Section 10 - Work Substitution for Overtime**

The Union proposes that individuals entitled to overtime assignment be empowered to transfer or redistribute that assignment to an individual of their own choosing. This position was based on the apparent thesis that preferential treatment is sometimes warranted but that the criteria upon which it has been allegedly awarded by the Deputy Fire Chief has been flawed. The Union thesis seeks to establish that the members would themselves redistribute in a responsible and humane manner showing preference only where it is indisputably warranted. The City objects to the proposal on the basis that

<sup>1/</sup> See Appendix Two

it invites corruption and unduly complicates the Administrator's burdens. Moreover, the Employer insists that the Union has never clarified or repudiated what the City understood to be a demand for a more complex distribution system which would require working with a seniority list encompassing the entire Fire Department.

We believe the Panel's determinations relating to **Article 17, Section 7** provide an objective and manageable arrangement for distributing overtime and the Union's proposal is denied. **ARTICLE 18 - Safety Standards.** The City has proposed modification of **Article 18 - Safety** which would establish two new requirements. The first of these is a requirement that Firefighters in the course of their work shifts engage in physical exercises which will preserve strength and stamina so that they will be physically equal to the strenuous demands imposed upon them at fire scenes.

The second aspect of the proposal is that the Firefighters be periodically assessed for physical agility in the same manner and by the same means it currently employs to test applicants for Firefighter positions. These tests and measurements were devised by Rochester's outside expert, Dr. Abrams, and are offered as having been validated for content and relevance in tests of Firefighters themselves.

The Union maintains it is manifestly unrealistic to expect people who have aged in the job to be able to perform up to the standards of youthful new recruits. It further

argues that the law already provides the Employer with authority to terminate individuals who can not fulfill their responsibilities. Finally, it questions the sincerity of the Employer's proposal contending that its members have been denied access to exercise apparatus on the fire station premises when off duty.

The Panel agrees that the City's expert has validated the agility tests for recruits and we believe it has shown that the members, with exceptions, can successfully pass the tests. What has not been shown, and is perhaps not demonstrable, is that persons who do not pass the tests are incapable of performing satisfactorily at a fire scene. The complexity of the matter even in confining one's self to a review of the physical tests is challenging. What, for example, should be the finding for an individual who completes the ladder climbing exercise in less than the average time but who greatly exceeds the expected time for crawling through a tunnel. However, in addition to the physical aspects of the tests, one notes that the intellectual or cognitive input of the Firefighter is neither evaluated or credited. Again, this undoubtedly poses a difficult and possibly even insurmountable problem but it is abundantly clear that the Firefighter brings brain as well as brawn to bear on the emergency. Even if each of these factors could be evaluated on some reliable quantifiable scale, one would still require an equation which in simple terms could assess how much physical decrement is

offset by experience increments. The Panel is impelled to deny the Employer's petition for the agility testing program.

Our view respecting the exercise requirements during work shifts is in principle favorable toward the Employer's position. However, we are confronted with a number of questions about how such a program should and could operate. We view this as a health and safety issue which could profit from the cooperative and joint input of the expertise of both parties. We shall therefore, remand the issue to the parties for further discussion but the Panel will reserve jurisdiction and admonish the parties to arrive at an agreement or to submit proposals and arguments to the Panel by April 15, 1996, which the Panel will consider and deal with in a supplementary award.

**ARTICLE 32 MEMBERS RIGHTS - Section 4 - Procedures for Determination of 8B-5 Status.** Section 8B-5 of the City Charter is the Rochester version of New York State General Municipal Law 207A, which deals with Firefighter injuries and disabilities. The benefits available to a Firefighter sustaining an illness or injury causally related to his/her employment are extensive. They may be loosely described as providing for continued enjoyment of all compensation benefits which would be forthcoming to the stricken individual if he or she were on active duty at that point in time. Medical expenses are payable in addition, and, a Firefighter may be entitled to remain in 8B-5 status until he or she reaches

retirement age at which time a full retirement benefit would be payable. Both Employer and Union proposed the inclusion in the successor Agreement of **ARTICLE 32, Section 4 - Procedures for Determination of 8B-5 Status**. The City maintains it is merely attempting to codify established practice. The Union, on the other hand, charges that members who have been injured or who have become sick as a consequence of their employment have, on occasion, been denied these benefits and have been forced to utilize ordinary sick leave which upon completion, along with a similar depletion of accrued vacation and related credits, subjects the member to termination. Moreover, a member on ordinary sick leave must rely upon his/her health insurance for payment of medical expenses, the benefits of which may be more restrictive than those available under 8B-5.

The Panel appreciates that each of the parties is attempting to meet its legitimate obligations in dealing with this issue. The Union, on the one hand, wants to ensure that no individual is denied what is the indisputable right of an injured member to be insulated from financial stress while he or she is bearing the pain and discomfort of healing or is, in some cases, coping with permanent disabilities. Rochester, on the other hand, is concerned about the temptations to use and abuse this very costly benefit by either claiming job related origins when that is not the case or by extending the time taken on 8B-5 leave beyond that when the individual is in fact qualified to return to duty.

The Panel has debated and reviewed the proposals and positions of the parties on this issue virtually ad infinitum and has concluded that the language it is awarding strikes a reasonable balance between the legitimate interests of both parties. This language, as it appears in the successor Agreement, shall state:

**ARTICLE 32 MEMBERS RIGHTS**

**Section 4 - Procedures for Determination of Section  
8B-5 Status**

**1. Purpose**

This Section is intended to provide a procedure to regulate the application for, and the award of, benefits under Section 8B-5 of the City Charter.

The terms "Fire Chief" or "Chief" as used herein shall also mean the Fire Chief's designee.

**2. Determination of Disability**

(A) A written injury report, on a form prescribed by the Fire Chief, shall be filed by the member with the member's commanding officer prior to leaving duty, for any injury or illness. The form shall be forwarded to the Fire Chief through the chain of command. Where a member is incapable of filing a report it

shall be filed by his commanding officer. In extenuating circumstances a member may file a report verbally with the appropriate deputy chief and shall notify his commanding officer he has done so, as promptly as possible but in no event more than 48 hours after the event.

- (B) Application for Section 8B-5 benefits for a member may be made by such member, the Fire Chief, or some other person acting on behalf of and authorized by such member. The application shall be made on a form prescribed by the Fire Chief.
- (C) No such application shall be approved unless it is filed in the office of the Chief within thirty (30) calendar days after the incident which allegedly gave rise to the illness or injury, or within thirty (30) calendar days of when the member knew or should have known that the injury or illness was a result of performance of the member's duties.
- (D) The Chief may request further information to support the application and the applicant shall be required promptly to provide such information.

- (E) Upon written request from the member, the Employer shall provide the member with one copy of any report produced by any physician or other expert who has examined the firefighter on behalf of the City.
- (F) The Chief shall determine eligibility for benefits pursuant to Section 8B-5.
- (G) Pending the final determination of any such application, absence from duty claimed to be due to the injury or illness shall be charged first to sick leave under Article 5, and if exhausted, to vacation time under Article 22. Where a member has exhausted accrued leave time and where there is no final determination of a hearing officer, the employee shall continue to be paid as if on sick leave, except that delays caused by the applicant or his representative shall result in discontinuance of pay for the extent of the delay. Any dispute regarding the responsibility for the delay shall be resolved by the hearing officer. In the event the member is determined to be eligible for 8B-5

benefits any covered costs paid by the member shall be reimbursed and any accrued leave used will be restored.

- (H) After making an initial determination on any application, the chief shall forthwith mail or deliver a written notice thereof to the applicant and his/her designated agent at the designated address.
- (I) If the initial determination by the Chief is that the applicant is eligible for Section 8B-5 benefits, the applicant shall continue to receive said benefits as long as the applicant remains disabled or until otherwise terminated pursuant to law.
- (J) If the initial determination of the Chief is that the applicant is not eligible for Section 8B-5 benefits, and the applicant wishes to contest such determination, the member shall serve a written demand on the Chief for a hearing and final determination of such application, which demand shall be served within ten (10) business days of the mailing of the Chief's initial determination. The

Hearing Officer shall make the final determination.

(K) If it is finally determined that the applicant is disabled but not entitled to Section 8B-5 benefits, the applicant shall be allowed to use accrued leave per the Collective Bargaining Agreement and, upon exhaustion of those benefits, shall be subject to termination in accordance with Law.

3. Light Duty Assignments or Return to Duty

Where a member has been off duty on 8B-5 status, and where the Chief, after examining a current medical report from a doctor chosen by the Chief and all other relevant evidence, determines that such member is capable of performing regular duty or light duty assignments, the Chief shall instruct the member in writing, with 24 hours notice, to report for duty on a certain date. If the member wishes to contest this matter, he/she may then submit to the Chief, within 24 hours of receipt of the notice, documentation which (s)he believes may be a cause for exemption from all or part of her/his duty assignment. If the firefighter's position is

based in whole or in part on a physician's examination and report, a copy of same must be submitted at that time. The Chief shall reconsider his determination modifying same with any revisions he deems appropriate. The firefighter shall then be obligated to report for light duty but may grieve the Chief's determination under the provisions of Article 27 of the CBA. Failure to report pursuant to the Chief's instructions shall be cause for suspension of all salary, wages and other benefits. For the purposes of this clause a member who has received emergency treatment and is directed to return to work shall not be considered to have been "off duty".

(4) Outside Employment

The Chief shall inform a member in writing of a suspension of Section 8B-5 benefits when the member engages in employment in violation of subsection (G) of Section 8B-5. If the member wishes to contest this matter, he shall serve a written demand upon the Chief for a hearing and a determination of said matter, which demand shall be served within ten (10) business days of the Chief's notice. Ownership of a business in the operation of

which the firefighter is not actively engaged shall not be considered outside employment.

5. Medical Expenses

No bills or claims for medical treatment or hospital care shall be presented for payment by the City pursuant to Section 8B-5 unless the following procedure is complied with:

- (a) Except in the case of an emergency, a member seeking medical treatment or hospital care alleged to be related to the disability shall obtain the prior approval of the Chief.
- (b) On each bill or claim for such medical services, provided in (a) above, the person or persons rendering such services shall certify thereon the nature of the services rendered, the nature of the injury or illness necessitating such services, and that the services rendered were required as a consequence of the incident that gave rise to the injury or illness. The City shall provide a form or notice setting forth these requirements.

**8. Hearings**

**In any hearing required by these procedures:**

- (a) The hearing officer shall be selected from a panel of at least three (3) persons mutually selected by the parties for the purpose of conducting hearings under this Section. Selection of each hearing officer shall be done by lot.**
- (b) The City shall provide the firefighter with advanced notice of not less than ten (10) business days and the firefighter may be represented by an attorney and/or the Union, who shall be afforded an opportunity to present documentary and testimonial evidence, to examine and cross examine witnesses, and to present arguments in support of the firefighter's position. A stenographic record of the hearing shall be maintained, the cost of which shall be borne equally by the parties. Compliance with the formal rules of evidence shall not be required.**
- (c) The burden of proof by a preponderance of the evidence shall be borne by the person seeking the benefit.**

- (d) The Hearing Officer shall make a final determination in writing within thirty (30) calendar days. Such final determination shall be mailed or delivered to the Chief, the member and his designated representative.
- (e) Cost of the hearing shall be shared equally by the Employer and the member. The parties shall bear the costs of their own witnesses and any other expenses the parties may incur.

9. Appeals

The determination of the Hearing Officer shall not be grievable under the collective bargaining agreement between the City and the Union. Any final determination by the Hearing Officer under these procedures shall be subject to review only as provided in Article 78 of the Civil Practice Law and Rules.

III. AWARD

The undersigned constituting the duly designated Interest Arbitration Panel in the above-captioned matter, certifies each issue was considered by the Panel in its entirety and each determination was concurred-in by at least two members of the Panel. The Panel awards the following amendments or revisions for inclusion in the successor Agreement between the parties. All

other provisions of the expired Agreement shall be carried forward into the successor Agreement verbatim.

1. The successor Agreement shall commence retroactively on July 1, 1993 and shall terminate on June 30, 1997.

Article 2, Salaries, Section 1, shall state as follows:

**SALARY SCHEDULE**

EFFECTIVE 7/1/93:				
BRKT/STEP	Start	STEP 1	STEP 2	STEP 3
80	28,355	33,355	38,243	40,136
82			43,788	45,956
84			49,516	51,966
85			55,874	58,639

EFFECTIVE 7/1/94:				
BRKT/STEP	Start	STEP 1	STEP 2	STEP 3
80	29,206	34,356	39,390	41,340
82			45,102	47,335
84			51,001	53,525
85			57,550	60,398

EFFECTIVE 7/1/95:				
BRKT/STEP	Start	STEP 1	STEP 2	STEP 3
80	29,498	34,700	39,784	41,753
82			45,553	47,808
84			51,511	54,060
85			58,126	61,002

Effective the issuance of the award, add a new, additional salary step which shall be the new Start step of \$26,000 for the life of the award.

EFFECTIVE 7/1/96:					
BRKT/STEP	START	STEP 1	STEP 2	STEP 3	STEP 4
80	26,000	30,235	35,568	40,779	42,797
82				46,692	49,003
84				52,799	55,412
85				59,579	62,527

ARTICLE 2, Section 2 shall state:

There shall be an entry level salary and four steps in the salary bracket for all Firefighters. Step 1 shall commence upon completion of six months service as a Firefighter. Step 2 shall commence one year after reaching Step 1. Step 3 shall commence one year after reaching Step 2. Step 4 shall commence one year after reaching Step 3.

ARTICLE 2, Section 6 - Nighttime Differential. This provision shall state:

Effective July 1, 1995 there shall be a \$0.60 per hour nighttime differential paid to members working either the 6:00 p.m. to 8:00 a.m. or the 4:00 p.m. to midnight shifts. Nighttime differential should not be paid to a member on sick or injury leave for more than 6 (six) nights. The nighttime differential should not be part of the member's base salary.

ARTICLE 2, Section 7 - Parity Allowance. This provision shall state:

There shall be a 2.5% annual "Parity Allowance" effective January 1, 1996. The payment of the allowance shall be in lump sum, no later than February 15 following the calendar year in which the allowance was earned. Parity allowance shall not be added to base salary.

ARTICLE 5, Section 2 - Sick Leave. Requirement of Doctor's Certificate. This provision shall state:

- A. Any members of the unit who are unable to perform their job duties as a result of an illness or injury and cannot report to work as scheduled shall (a) notify his immediate supervisor more than 1 hours prior to the start of his scheduled shift, if possible, and (b) notify the office of the physician(s) designated by the Employer.
- B. Any member who has been off duty for any length of time as the result of any illness or injury and is returning to duty shall notify his immediate supervisor or designee at least two (2) hours prior to the start of the shift.
- C. Members off duty as a result of any illness or injury shall be allowed to return to duty subject to the following:
  - 1. Members who are off duty for any length of time due to an injury shall be required to produce a return to duty certificate from a physician(s) appointed for that purpose by the city, before returning to duty, unless waived by the Fire Chief or his designee.
  - 2. Members who are off duty due to an illness for more than two (2) working days shall obtain a return to duty certificate from

a physician(s) appointed for that purpose by the City, before returning to duty, unless the requirement of the certificate is waived by the Fire Chief or his designee.

3. Members who are off duty due to any illness or injury for more than three (3) consecutive working days shall produce a certificate of treatment from a licensed physician unless waived by the Fire Chief.

D. The certificate of treatment shall include a diagnosis, dates of visit(s), dates of work disability, any restrictions upon return to work and the signature of the treating physician.

E. At the Employer's discretion, any member may be required to report for a medical examination to a physician(s) designated by the employer for the purposes of verifying a claim of illness or injury or to verify the member's ability to perform the essential functions of the job. The costs of any such examination shall be borne by the Employer.

ARTICLE 9, Section 2 - Premium. This provision shall state:

Effective January 1, 1996, Employee contributions from all members electing health insurance shall be three and one-half percent (3.5%) of the cost of the coverage as provided in Section 1.

ARTICLE 9, Section 9 - Alternate Health Benefits. The provisions of this Agreement shall state:

- A. Effective 1/1/96, all those who accept health insurance coverage from a source other than the City of Rochester shall receive \$1,000 per annum, prorated by month, based on the City's fiscal year, payable by September 1 for the preceding fiscal year. If 7.5% of the unit members accept this option by June 30th of any year, the payment shall increase to \$1,500 per annum. If less than 7.5% of the membership accept this option the rate shall be \$1,000. Application shall be made on a form provided by the employer, attesting to and identifying the alternative coverage.
- B. Initial application may be made at any time during the 95-96 fiscal year. Subsequent applications shall be made for the following fiscal year at the same time as "open enrollment" for health insurance.
- C. Re-enrollment in City Coverage is permitted during the year in the event of a change in family status or loss of alternative coverage.

**ARTICLE 14, Section 1 - Work Hours/Work Schedule**

This matter has been remanded to the parties for further discussion. The Panel shall retain jurisdiction and the parties are to submit agreements or positions and arguments to the Panel by April 15, 1996 whereupon the Panel will make any necessary determinations and issue a supplementary award.

**ARTICLE 14, Section 3 - Cycle Time**

This provision is to state:

Whenever a member has scheduled Cycle Time and has suffered an illness or off-duty injury which placed him on sick leave prior to the conclusion of his last regularly scheduled shift preceding the scheduled Cycle Time, his/her Cycle Time shall be rescheduled. All sickness and off-duty injuries pertaining to this section shall be verified by a doctor's certificate. Members will forfeit such time if they fail to produce a doctor's certificate.

**ARTICLE 17, Section 4 - Overtime, Assignment to Fire Service Related Educational Classes. This provision shall state:**

Members who are assigned by the Fire Chief to attend Fire Service related educational classes outside, and in addition to, their regularly scheduled work period shall be paid at the rate of time and one-half. This shall not apply to instances where the member's work schedule has been

changed to accommodate the schedule of the training.

**ARTICLE 17, Section 7 - Line Overtime.**

This provision shall state:

- A. Selection for overtime for general overtime assignments shall be from lists organized by seniority in title, by battalion and group. There shall be separate lists for day and for night overtime. There shall be a separate division-wide list for Haz-Mat overtime and separate Holiday lists by group. There shall be a separate division-wise list for Battalion Chiefs. A member working the non-group schedule may be added to only one Battalion/Group list.
- B. When overtime needs arise the Chief or his designee shall start at the top of the appropriate list and proceed through the list. Members shall have two opportunities for refusal, at which time no further overtime will be offered until the creation of a new list. A list will be retired and new list created after each member on the list has worked two overtimes or has refused two opportunities.

- C. Where there are lists by Battalion within the Group. Overtime shall be offered within a Battalion list first. When all the members in a Battalion list have worked two overtimes or have refused two overtime opportunities, overtime will be offered to members of other Battalions until everyone in the Group has worked two overtimes or have refused two overtime opportunities, at which time the Battalion/Group list shall be retired and a new list created.
- D. A list of the members who have worked general overtime assignments shall be published weekly and distributed to the fire houses.
- E. Overtime requiring specializations or special qualifications shall continue to be managed by the Fire Chief or his designee.

ARTICLE 17, Section 8 - Compensatory Time. A Paragraph D shall be added to this provision stating as follows:

- D. Members working the group system shall be allowed to work whole Cycle Time days or nights and shall be compensated with compensatory time at the straight time rate, in lieu of overtime, with accruals to be limited to a maximum of 42 hours. Members working the group system may use

compensatory time only in cases of emergencies approved by the Fire Chief.

**ARTICLE 18, Section 1 - Safety/Health and Safety.** This matter is remanded back to the parties for further discussion. The Panel reserves jurisdiction and the parties are to submit agreement or proposals and arguments to the Panel by April 15, 1996 on the basis of which the Panel will make a determination and issue a supplementary award.

**ARTICLE 32, Section 4 - Members Rights. Procedures for Determination of 8B-5 Status.** The provisions of this Section shall state as follows:

**ARTICLE 32 MEMBERS RIGHTS**

**Section 4 - Procedures for Determination of Section 8B-5 Status**

**1. Purpose**

This Section is intended to provide a procedure to regulate the application for, and the award of, benefits under Section 8B-5 of the City Charter.

The terms "Fire Chief" or "Chief" as used herein shall also mean the Fire Chief's designee.

**2. Determination of Disability**

(A) A written injury report, on a form prescribed by the Fire Chief, shall be filed by the member with the member's

commanding officer prior to leaving duty, for any injury or illness. The form shall be forwarded to the Fire Chief through the chain of command. Where a member is incapable of filing a report it shall be filed by his commanding officer. In extenuating circumstances a member may file a report verbally with the appropriate deputy chief and shall notify his commanding officer he has done so, as promptly as possible but in no event more than 48 hours after the event.

- (B) Application for Section 8B-5 benefits for a member may be made by such member, the Fire Chief, or some other person acting on behalf of and authorized by such member. The application shall be made on a form prescribed by the Fire Chief.
- (C) No such application shall be approved unless it is filed in the office of the Chief within thirty (30) calendar days after the incident which allegedly gave rise to the illness or injury, or within thirty (30) calendar days of when the member knew or should have known that the injury or illness was a result of

performance of the member's duties.

- (D) The Chief may request further information to support the application and the applicant shall be required promptly to provide such information.
- (E) Upon written request from the member, the Employer shall provide the member with one copy of any report produced by any physician or other expert who has examined the firefighter on behalf of the City.
- (F) The Chief shall determine eligibility for benefits pursuant to Section 8B-5.
- (G) Pending the final determination of any such application, absence from duty claimed to be due to the injury or illness shall be charged first to sick leave under Article 5, and if exhausted, to vacation time under Article 22. Where a member has exhausted accrued leave time and where there is no final determination of a hearing officer, the employee shall continue to be paid as if on sick leave, except that delays caused by the applicant or his representative shall result in discontinuance of pay for the

extent of the delay. Any dispute regarding the responsibility for the delay shall be resolved by the hearing officer. In the event the member is determined to be eligible for 8B-5 benefits any covered costs paid by the member shall be reimbursed and any accrued leave used will be restored.

- (H) After making an initial determination on any application, the chief shall forthwith mail or deliver a written notice thereof to the applicant and his/her designated agent at the designated address.
- (I) If the initial determination by the Chief is that the applicant is eligible for Section 8B-5 benefits, the applicant shall continue to receive said benefits as long as the applicant remains disabled or until otherwise terminated pursuant to law.
- (J) If the initial determination of the Chief is that the applicant is not eligible for Section 8B-5 benefits, and the applicant wishes to contest such determination, the member shall serve a written demand on

the Chief for a hearing and final determination of such application, which demand shall be served within ten (10) business days of the mailing of the Chief's initial determination. The Hearing Officer shall make the final determination.

- (K) If it is finally determined that the applicant is disabled but not entitled to Section 8B-5 benefits, the applicant shall be allowed to use accrued leave per the Collective Bargaining Agreement and, upon exhaustion of those benefits, shall be subject to termination in accordance with Law.

3. Light Duty Assignments or Return to Duty

Where a member has been off duty on 8B-5 status, and where the Chief, after examining a current medical report from a doctor chosen by the Chief and all other relevant evidence, determines that such member is capable of performing regular duty or light duty assignments, the Chief shall instruct the member in writing, with 24 hours notice, to report for duty on a certain date. If the member wishes to contest this matter, he/she

may then submit to the Chief, within 24 hours of receipt of the notice, documentation which (s)he believes may be a cause for exemption from all or part of her/his duty assignment. If the firefighter's position is based in whole or in part on a physician's examination and report, a copy of same must be submitted at that time. The Chief shall reconsider his determination modifying same with any revisions he deems appropriate. The firefighter shall then be obligated to report for light duty but may grieve the Chief's determination under the provisions of Article 27 of the CBA. Failure to report pursuant to the Chief's instructions shall be cause for suspension of all salary, wages and other benefits. For the purposes of this clause a member who has received emergency treatment and is directed to return to work shall not be considered to have been "off duty".

(4) Outside Employment

The Chief shall inform a member in writing of a suspension of Section 8B-5 benefits when the member engages in employment in violation of subsection (G) of Section 8B-5. If the member wishes to contest this matter, he shall serve

a written demand upon the Chief for a hearing and a determination of said matter, which demand shall be served within ten (10) business days of the Chief's notice. Ownership of a business in the operation of which the firefighter is not actively engaged shall not be considered outside employment.

5. Medical Expenses

No bills or claims for medical treatment or hospital care shall be presented for payment by the City pursuant to Section 8B-5 unless the following procedure is complied with:

- (a) Except in the case of an emergency, a member seeking medical treatment or hospital care alleged to be related to the disability shall obtain the prior approval of the Chief.
- (b) On each bill or claim for such medical services, provided in (a) above, the person or persons rendering such services shall certify thereon the nature of the services rendered, the nature of the injury or illness necessitating such services, and that the services rendered were required as a consequence of the incident that gave rise to the injury or

illness. The City shall provide a form or notice setting forth these requirements.

8. Hearings

In any hearing required by these procedures:

- (a) The hearing officer shall be selected from a panel of at least three (3) persons mutually selected by the parties for the purpose of conducting hearings under this Section. Selection of each hearing officer shall be done by lot.
- (b) The City shall provide the firefighter with advanced notice of not less than ten (10) business days and the firefighter may be represented by an attorney and/or the Union, who shall be afforded an opportunity to present documentary and testimonial evidence, to examine and cross examine witnesses, and to present arguments in support of the firefighter's position. A stenographic record of the hearing shall be maintained, the cost of which shall be borne equally by the parties. Compliance with the formal rules of evidence shall not be required.

- (c) The burden of proof by a preponderance of the evidence shall be borne by the person seeking the benefit.
- (d) The Hearing Officer shall make a final determination in writing within thirty (30) calendar days. Such final determination shall be mailed or delivered to the Chief, the member and his designated representative.
- (e) Cost of the hearing shall be shared equally by the Employer and the member. The parties shall bear the costs of their own witnesses and any other expenses the parties may incur.

9. Appeals

The determination of the Hearing Officer shall not be grievable under the collective bargaining agreement between the City and the Union. Any final determination by the Hearing Officer under these procedures shall be subject to review only as provided in Article 78 of the Civil Practice Law and Rules.

The foregoing are inclusive of all changes and amendments awarded by the Panel in the resolution of this impasse.

Delmar, New York  
January 9, 1996

Respectfully submitted,

  
Sumner Shapiro  
Chairperson

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

Sworn to before me this 11<sup>th</sup> day of January, 1996

Elizabeth A. Schraa  
Notary Public

ELIZABETH A. SCHRAA  
Notary Public, State of New York  
Residing in Albany County  
My Commission Expires 4/28/96

*Daniel C. Wissman*

Daniel C. Wissman  
Employer Designated Member  
Concurring

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

Sworn to before me this 10th day of January, 1996

*Angela J. Zink*  
\_\_\_\_\_  
Notary Public

ANGELA J. ZINK  
Notary Public in the State of New  
MONROE COUNTY 97  
Commission Expires Aug. 31, 19\_\_

*John McMenemy*  
\_\_\_\_\_  
John McMenemy  
Employee Organization Designated Member  
Concurring

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

Sworn to before me this 10th day of January, 1996

*Angela J. Zink*  
\_\_\_\_\_  
Notary Public

ANGELA J. ZINK  
Notary Public in the State of New  
MONROE COUNTY 97  
Commission Expires Aug. 31, 19\_\_

# Appendix One

**City of Rochester**

FAX (716) 428-6059  
TDD (716) 232-3280

Office of the Mayor

City Hall, Room 307-A  
30 Church Street  
Rochester, New York 14614-1280  
(716) 428-7045

January 9, 1996

Sumner Shapiro  
Public Panel Member  
64 Darroch Rd.  
Delmar, NY 12054

John McMenemy  
Rochester Fire Fighters Associaion Panel Member  
Rochester Fire Fighters Association  
1425 Mt. Read Blvd, Suite 15  
Rochester, NY 14606

Daniel Wissman  
City of Rochester Panel Member  
City Hall, Room 102-A  
Rochester, NY 14614

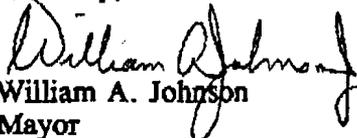
RE: PERB Case Number IA94-023;M94-071  
Rochester, City of & Rochester Firefighters ASSN #1071

Dear Sirs:

This is to inform you that the City of Rochester authorizes the Arbitration Panel in the above-referenced case to issue an award for a period of four (4) years.

Thank you for your cooperation in this matter.

Sincerely,

  
William A. Johnson  
Mayor

copy: Richard A. Curreri, PERB, Director of Conciliation

# Rochester Fire Fighters Association, Inc.

OCAL 1071 I.A.F.F.

ROCHESTER, NEW YORK



1425 Mt. Read Boulevard  
Rochester, N.Y. 14606

Phone: 716-458-9250 • Fax: 716-458-9259



Mr. Sumner Shapiro  
64 Darroch Road  
Delmar, New York  
12054

January 6, 1996

Dear Mr. Shapiro,

You are serving as the neutral chair in PERB Case No. IA94-023;M94-071, an interest arbitration between Local 1071 and the City of Rochester. The other members of the Arbitration Panel are Mr. Daniel Wissman and Mr. John McMenemy. I am requesting on behalf of Local 1071 that the Panel issue a four-year award in this matter.

If you or the other Panel members have any questions about this request please contact me at once. I appreciate your cooperation in this matter.

Very truly yours,

*Ernest Miller*

Ernest Miller  
President Local 1071

xc: D. Wissman  
J. McMenemy

# Appendix Two

**MEMORANDUM OF AGREEMENT  
BETWEEN  
THE CITY OF ROCHESTER, NEW YORK  
AND  
THE ROCHESTER FIRE FIGHTERS ASSOCIATION**

The parties agree to amend the award of the arbitration panel as follows:

Add to Article 17, Section 7.D.

"A member wishing to work his scheduled Cycle Time shall notify the line deputy Chief at least ten (10) days prior to the day or night which the member shall work."

Add to Article 2, Section 7:

"Parity allowance shall not be added to base salary"

For the City

*Daniel C. Wissman*  
Daniel C. Wissman  
Employer Panel Member

For the Union:

*John P. McMenemy*  
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Employee Organization Panel Member

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date: 1-10-96



training will work a Monday through Friday, eight hour per day schedule. Regular hours of work shall be 8:00 AM to 4:30 PM with a one-half hour unpaid lunch period.

**4. Vacations**

Those working the four day work week shall have the following vacation accruals:

1 TO 4 YEARS OF SERVICE	10 WORKING DAYS
5 TO 8 YEARS OF SERVICE	13 WORKING DAYS
9 TO 11 YEARS OF SERVICE	14 WORKING DAYS
12 TO 14 YEARS OF SERVICE	15 WORKING DAYS
15 TO 17 YEARS OF SERVICE	16 WORKING DAYS
18 TO 19 YEARS OF SERVICE	18 WORKING DAYS
20 OR MORE YEARS OF SERVICE	20 WORKING DAYS

Vacation accruals at the time of implementation shall be converted to hours based upon the eight hour day.

5. Those working the non-group schedule shall have a one-half hour paid lunch break, scheduled by their supervisor. The lunch period may be interrupted for legitimate operating reasons.

6. The Employer may establish reasonable work rules regarding reporting procedures. New rules will be forwarded to the Union and posted for seven calendar days prior to implementation. Employees will not be required to punch time clocks.

7. Work substitution will be permitted between staff positions with the approval of the Deputy Chief, which approval will not be unreasonably denied. Approval of work substitution is subject to the operating needs of the unit(s), and only where those involved meet all of the requirements of the position, as determined by the Employer.

8. This experiment shall expire when a successor to the existing contract is negotiated or when a contract arbitration award is issued. In the event this four-day week is not continued the parties shall return to and restore the terms and conditions effective prior to the implementation of this arrangement.

9. The parties will establish a joint committee, which may be the labor-management committee, and will meet upon the request of either party to evaluate and discuss problems of implementation of this experiment. The parties may amend any portion of this experiment, in writing, signed by the Union President and the Manager of Labor Relations.

10. This experiment shall be effective by July 15, 1996.

