

**NEW YORK STATE
PUBLIC EMPLOYMENT RELATIONS BOARD**

**In the Matter of the Interest Arbitration
Between**

CITY OF BUFFALO, NEW YORK

-and-

**BUFFALO PROFESSIONAL FIRE FIGHTERS
ASSOCIATION, INC. LOCAL 282**

**OPINION AND
AWARD**

**PERB# IA99-024
M99-210**

Before: Interest Arbitration Panel

- | | |
|-----------------------------|--------------------------------|
| Stuart M. Pohl, Esq. | - Chairperson |
| Edward Piwowarczyk | - Public Employer member |
| Vincent Gugliuzza | - Employee Organization member |

**NYS PUBLIC EMPLOYMENT RELATIONS BOARD
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Appearances:

CONCILIATION

For Petitioner

- | | |
|---------------------------|--|
| W. James Schwan | - Attorney |
| Tracy D. Sammarco | - Attorney |
| Anthony Hynes | - Consultant |
| Daniel O'Connor | - Treasurer Local 282 |
| Jean Kline | |
| Anthony Page | - 1 st Vice President Local 282 |
| Daniel Corcoran | - Lt. Rescue 1 |
| Philip C. Woods | - Vice President Local 282 |
| Edward Fennell | - Consultant |
| Ronnie Beverly | |
| Donald W. Petschke | - Fire fighter/Sergeant-at-Arms Local 282 |
| Michael Lombardo | |
| Edward McGowan | |
| Sal Colangelo | - Fire Prevention |
| Ronald Cassel | - Planning Officer |
| Duncan MacRae | - Consultant |

For City

- | | |
|-----------------------|------------|
| Sean P. Beiter | - Attorney |
|-----------------------|------------|

Louis R. Giordina	- Assistant Director Labor Relations
Kathleen O'Hara	- Director of Labor Relations (Now Commissioner of HR)
Jeffrey E. Reed	- Assistant Corporation Counsel
Steven C. Miska	- Assistant Director Labor Relations
James B. Milroy	- Director of Budget & Management
James L. Jarvis	- Former Buffalo Director of Labor Relations
Thomas J. Hurley	- Attorney
Cornelius Keane	- Commissioner of Fire
Calvin G. Worthy	- Deputy Commissioner Fire
John A. Lydon	- Deputy Commissioner Fire

On January 27, 2000, the New York State Public Employment Relations Board ("PERB") wrote advising I had been designated to serve as the Chairperson of the Public Interest Arbitration Panel (hereinafter, the "**Panel**") in the above-entitled matter. Vincent Gugliuzza, President of Buffalo Professional Fire Fighters Association Local 282 (hereinafter referred to as the "**Petitioner**") was designated as the Employee Organization member of the Panel, and Edward G. Piwowarczyk, Esq., of counsel Jaeckle, Fleischmann & Mugel, was designated as the Public Employer Member of the Panel.

Hearings were held on May 17, May 22, May 23, May 26 and June 30, 2000, in the City of Buffalo, New York. At those times, the **CITY OF BUFFALO, NEW YORK** (hereinafter referred to as the "**City**") was represented by Sean P. Beiter, Esq., of counsel, Jaeckle, Fleischmann & Mugel, and the **Petitioner** was represented by W. James Schwan, Esq., of counsel Schwan, Sammarco & Sammarco.

At the hearing, both parties were given a full opportunity to call witnesses and to present documentary, video and other evidence in support of their respective positions, as well as to cross examination any witnesses called by the other. At the conclusion of the hearing, the parties agreed

to submit post-hearing briefs. The Panel received both briefs by September 15, 2000 and declared the hearing closed.

I. Introduction

This document is the Opinion and Award of the Public Arbitration Panel identified above as designated by PERB pursuant to Civil Service Law Section 209.4 on January 27, 2000. The prior contract settlement between the parties is set forth in a Memorandum of Agreement (hereinafter referred to as the "96-98 Contract Settlement") covered the period July 1, 1996 through June 30, 1998 (Jt. 5¹). The last printed version of a collective bargaining agreement (hereinafter referred to as the "cba") between the parties is found in Jt. 1 and covered the period July 1, 1984 through June 30, 1986. That expired cba was followed by the Keil Interest Arbitration Panel Award for the period July 1, 1986 through June 30, 1988 and the Bantle Interest Arbitration Panel Award for the period July 1, 1988 through June 30, 1990 (Jt. 1). Thereafter, a series of Interest Arbitration Awards was issued by the Selchick Arbitration Panel for the period July 1, 1990 through June 30, 1992 (Jt. 2); the Foster Arbitration Panel for the period July 1, 1992 through June 30, 1995 (Jt. 3); and the Lewandowski Arbitration Panel for the period July 1, 1995 through June 30, 1996

Subsequent to the above-noted hearings, the instant Panel met in executive session at the office of Jaeckle, Fleischmann & Mugel, LLP., on October 23, 2000. At least two of the three members of the Panel concurred in the disposition of each issue within the parameters framed by the Opinion and Award on each.

¹All references to Joint Exhibits received into the record at the hearing are cited, herein, as "Jt. ___."

II. Statutory Criteria to Be Considered By the Panel.

This Panel was designated by PERB pursuant to Section 209.4 of the New York State Civil Service Law. That section provides this Panel with the authority to issue a just and reasonable determination of the pending bargaining impasse between the above-named parties. That just and reasonable determination must specify the bases for its findings and take into consideration all relevant factors including:

“(v) . . .

- 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: (5) job training and skills.

III. Positions of the Parties and Panel's Opinion

A. Comparability.

1. **The Petitioner** contends that, for purposes of resolving the various outstanding bargaining issues in this impasse, the Panel should make comparisons to the base pay, total compensation levels and other benefits enjoyed by the City's police officer (hereinafter referred to as "Buffalo Police"), as well as by fire fighters in the City of Rochester, New York (hereinafter referred to as "Rochester FF").

(b) Within Western New York, the fire fighters in the City of Rochester are the most comparably paid fire department. Nonetheless, the total earnings of fire fighters in Rochester, as of July 1, 1998, continue to exceed those paid to Buffalo fire fighters, even after Rochester fire fighters' health insurance contributions are factored in. However, in Rochester, that city recognizes that its police and fire fighters are entitled to "at least equal pay."

(c) The Petitioner has not offered evidence concerning any other communities it believes to be "comparable" for purposes of its various proposed contract improvements and modifications.

2. **The City** maintains that in evaluating its health insurance and wage proposals, and certain of the Petitioner's economic proposals, the Panel should consider the fire departments in Albany, Binghamton, Rochester and Syracuse, New York as comparable communities. Other than the inherent similarities shared by the fire fighters in all municipalities such as similar, hazardous duties and risk of physical injury and/or death, the City offered the following evidence to assist this Panel in determining whether the proffered cities are comparable.

Thus, it notes that the *geographic area* of Buffalo (40.6 square miles) is most closely compared to that of Rochester (35.8 square miles). According to its data (Special Report on Municipal Affairs, December 1998, NYS Office of the State Comptroller (City Appendix III), Buffalo's is almost twice as big as Albany (21.4 square miles); 60% larger than Syracuse (25.1 square miles); and almost four times the size of Binghamton (10.5 square miles).

Buffalo's *population* of 328,123 (1990 census figures. Upclose, 1990 Census Source Book, 1992 - City Appendix 1) is more than three times that of Albany (101,082); more than 40% larger than Rochester (231,636); twice the size of Syracuse (163,860); and over five times the size of

Binghamton (53,008).²

The *taxable valuation* for Buffalo has continued to decline from \$6,287,017,353 in fiscal year 1993-94, to \$6,153,277,000 in fiscal year 1996-1997, to \$5,833,525,880 for the current fiscal year³ (City Appendix III). Comparing its 1996-97 taxable valuation, on a per capita basis, to that of the other four municipalities, reveals \$18.75 per capita in Buffalo; \$2.56 per capita in Albany; \$24.88 per capita in Binghamton; \$22.07 per capita in Rochester; and \$21.90 per capita in Syracuse (City Appendix III).

The City further notes that *per capita income* for the City (\$10,445), in 1989, was the lowest of the four cities with which it seeks to be compared (City Appendix IV).

The City also offers other statistics for purposes of comparison. None of these, however, are of relevance to our determination of comparability

3. Opinion on Comparability

The Panel has an obligation to compare the wages, hours and other conditions of employment of employees involved in this proceeding with those of employees performing similar services, under similar working conditions in public and private employment in "comparable communities." The Panel further recognizes that the purpose for such comparison is to assure, as much as is possible under the circumstances, that external equity exists for the employees of the public employer.

The Panel further notes that, while there are some inherent differences between the types of duties performed by police officers and those performed by fire fighters, it is common for interest

²The Panel does not have year 2000 census figures, but accepts the City's contention that the City's population base has continued to decline during the 1990s. There is no evidence to conclude that said trend also existed in Albany, Binghamton, Rochester and Syracuse.

³The City suggests property valuations will decline as much as 11% once a property revaluation has been completed.

arbitrators to consider the fire and police employees of the same municipality as "comparable," since each provides valuable public safety and protection services which place the health and lives of those employees at risk. Although the Panel finds the City's firefighters unit to be comparable to the Buffalo police unit, the Panel will utilize this comparability, along with several other factors, in determining what is a just and reasonable award.⁴ In so doing, it will also analyze and, to the extent warranted, apply the concept of parity urged by the Petitioner and discussed at length by the City.

In deciding whether any other communities should be used as comparables, it is necessary for the Panel to first consider such criteria as (1) neighboring communities; (2) population similarities; (3) the extent of fires and related problems in the communities served; (4) the ability of each community to pay for the economic package sought through interest arbitration, including such things as (a) assessed property values; (b) taxes levied; (c) budget; (d) constitutional taxing limits; and (e) any other distinctive characteristics of the community. While the precise job duties performed by individual officers of each fire department may well vary from community to community, the Panel has assumed that, for the most part, the fire fighters in each of the suggested communities perform essentially the same duties, and are subject to the same physical and educational requirements. Unfortunately, to the extent evidence exists in the current record concerning the above enumerated factors, it appears to this Panel that the only other somewhat comparable community to Buffalo is Rochester, New York. However, even Rochester is insufficiently comparable for use in our analysis of each party's proposals and contentions. Rather, it appears that the best comparisons available to

⁴In so doing, we agree with the Foster Panel that there are differences between the job and responsibilities of a firefighter and those of a police officer. For instance, police officers are assigned to an evening or night shift as their regular tour of duty. Firefighters, on the other hand, rotate shifts so that no firefighter is always assigned to the night shift or the day shift. Working the hours 1700 to 0800 hours is a part of every firefighter's job.

the Panel are those which can be made between Buffalo fire and Buffalo police, in the first instance, and to a lesser extent, between Buffalo fire and other City bargaining units.⁵

B. Interest and Welfare of Public and City's Financial Ability to Pay.

1. **The City** does not argue that it lacks the ability to pay to fund each of the Petitioner's proposals. However, to do so it would have to use most of its available taxing authority. This would likely deprive it of the ability to fund any pay increases for other City bargaining units or to be able to meet increases in the cost of health care insurance and utilities. Moreover, if revenues continue to decline, the City's credit rating would be lowered; the cost of borrowing would increase, and the City would have to cut services thereby disrupting labor management relations with all unions that represent City employees. Only significant State aid would enable the City to continue to operate. The City cannot control how much State aid it will receive.

The City's financial position is precarious. Its population continues to decline; its taxable valuation on real property continues to decline; the City's per capita income compared to other cities in the State is low resulting in a poorer tax base in need of more government-provided services; and its budgeted revenue for fiscal year ending June 30, 2000 was \$266,506,000, while its total expenditures of the same amount included a \$1.6 million dollar transfer from the City's General Fund to the Solid Waste and Recycling Enterprise Fund which now owes the City \$6.8 million. In the past the City has attempted to retain an undesignated, unreserved fund of \$3 million. For fiscal year ending June 30, 2000, it was only able to designate \$1.67 million, thereby reducing its ability to deal

⁵The Panel recognizes that, while the employees of these other units perform valuable services for the citizens of the City, they do not, for the most part, engage in the types of hazardous activities commonly engaged in by Buffalo fire and Buffalo police. Nonetheless, the terms and conditions of employment enjoyed by employees in those units is of some probative value in determining a just and reasonable award in the instant proceeding.

with unanticipated expenditures or shortfalls in projected revenue.

The City's budget for fiscal year ending June 30, 1999, reserved \$4,336,208 for agreements with City unions, representing an approximately 3% increase for all City unions. It similarly budgeted for an approximately 3% increase for all City unions for fiscal year ending June 30, 2000. The Panel should not award 3% for the two years its Award will cover, but should consider the budgeted amounts simply as "the most" the City can pay if its health insurance and management rights proposals are adopted by the Panel.

The City's real property tax levy for fiscal year ending June 30, 2000, was 83.1% of its *constitutional taxing limit*. Rochester has utilized 63.8% of its available taxing authority, while the other three cities offered for purposes of comparison have used still less. The City's ability to raise additional revenue through increasing taxes is limited. Its Budget Director, Dr. Milroy, estimated that after revaluation is completed, the City's tax ceiling will decrease to approximately \$159,800,000, leaving it with unused taxing authority of about 7.7%. Dr. Milroy prefers that the tax margin remain at \$29.9 million to ease concerns of various bond rating agencies, thereby maintaining the City's current bond rating and preventing the cost of borrowing from increasing. This data, coupled with data provided on residents below the poverty level (24.9%); median value of owner occupied housing (\$46,700); and the vacancy rate in Buffalo further supports the conclusion that the City's taxpayers cannot afford a tax increase to fund the Petitioner's various economic proposals.

2. **The Petitioner** contends that the evidence of record, principally submitted by witness Edward Fennell, supports its opinion that the City does have the ability to pay for a reasonable and just award. It relies upon the fact that the City has received \$22 million in State aid, coupled with the State's agreement to bail out the City and Buffalo Board of Education regarding back pay liability

to Buffalo teachers. Significantly, this money was received *after* the City had already budgeted for fire fighters' salaries, fringe benefits and other costs for the period July 1, 1998 through June 30, 2000. The City budgeted for 3% across the board increases effective July 1, 1998 and again effective July 1, 1999. The 3%/3% increases include salaries, social security and retirement. However, savings have been realized since the anticipated cost for the retirement system has been much less than anticipated.

The City's tax levy picture continues to show improvement. For fiscal year 2000-2001, the Mayor's budget included a decrease in the tax levy. This was the fourth year in a row that a decrease occurred for a total decrease of \$12.4 million. The homestead tax remained the same, but the non-homestead tax decreased by 5.08%. And refunds to taxpayers under the STAR program provided them with \$13 million in annual property taxes. Nor were user fees increased in fiscal 200-2001 (Pet. Ex.29⁶, Tab #1). The 2000-2001 budget demonstrates the City's ability to pay. The City even managed to budget more funds for the Buffalo Schools and to add \$22 million in capital improvements. The Police Department was able to add twenty-seven (27) new employees as well as a mobile computer terminal and computer network upgrades. And in Buffalo Fire, it added four (4) new lieutenants, four (4) new civilian dispatchers, and funded three new pumpers.

Even its General Fund Balance has shown improvement over the years, rising from a deficit of \$8.9 million in July 1993, to approximately \$20 million in the fiscal year ending June 30, 1999 (Pet. Ex. 29, Tab #2). The General Fund Balance has been maintained even though the tax levy has been lowered, and although Buffalo's overall real property tax per \$1,000 full value is four dollars per

⁶All references to Petitioner Exhibits received into evidence at the hearing in this matter are cited, herein, as "Pet. ___," or "Pet. __, Tab# ___."

thousand less than that in Rochester (Pet. Ex. 29. Tab #4).

It is true that the City has been dependent upon State aid for years. That will not change in the foreseeable future. The State will not abandon its commitment to assist Buffalo. The last issued bond statement (Pet. Ex. 29. Tab #10) also provides insight into the City's improving financial condition, as well as of the fact that has cut eleven more positions in Fire than in Police. The City has the ability to pay without negatively effecting the interests or welfare of the public.

3. Opinion on Ability to Pay

The Panel has carefully considered this issue and the testimony and documentary evidence supplied by the City through its Budget Director, Dr. Milroy, and by the Petitioner through its consultant, Edward Fennell. Although the City is correct to be concerned for what the future holds, the Panel is satisfied that the City has the financial ability to pay for an award which is just and reasonable within the intent of the Taylor Law.

Although the Panel agrees with the City's assertion that the "average" City taxpayer already absorbs a substantial part of the tax burden, and that such burden has steadily increased as the commercial and industrial tax bases of the City have declined, the Panel cannot accept the City's claim that it lacks the actual or practical ability to fund a just and reasonable award. It has budgeted considerable money for Buffalo Fire for both fiscal 1998-1999 and 1999-2000 which have now ended.

There remains to be decided, of course, what contract modifications and/or additions will constitute a just and reasonable resolution of this dispute. The Panel's Opinion with regard to each proposal will be discussed under the headings which follow.

The Petitioner seeks a two year Award. It has submitted to this Panel twenty-four (24) proposals (Jt. 6). Nineteen (19) of the proposals are economic in character. These proposals include

the subjects listed below. For sake of clarity and continuity, each proposal is referred to by the original proposal number assigned to it by the Petitioner, and as referred to in Exhibit A to the Petitioner's Petition for Compulsory Interest Arbitration (Jt. 6). City Proposals will also be referred to by the original proposal number assigned to it by the City in Exhibit A to its Response to the Petition (Jt. 7).

IV. OUTSTANDING ECONOMIC PROPOSALS

- 1. Wages (Pet. Prop. # 1/City Prop. # 13)**
- 2. Health and Dental Insurance For Active Employees and Retirees (Pet. Prop. #5, 6 & 7/City Prop. # 3 & 7)**
- 3. Longevity Pay (Pet. Prop. #22)**
- 4. Shift Differential (Pet. Prop. # 3)**
- 5. Daily Pay Rate (Pet. Prop. #4)**
- 6. Perfect Attendance Record Credits (Pet. Prop. #9)**
- 7. Compensatory Time (Pet. Prop. #13)**
- 8. Acting Time Pay (Pet. Prop. #14)**
- 9. Higher Rate For Assignment to Higher Position. (Pet. Prop. # 15)**
- 9. Vacation Entitlements (Pet. Prop. #18)**
- 10. Death Benefit (Pet. Prop. #19)**
- 11. Group Life Insurance (Pet. Prop. #20)**
- 12. Funeral and Related Expenses (Pet. Prop. #23)**
- 13. Educational Incentive**
- 14. Holiday Pay (Pet. Prop. #27)**

- 15. **Sick Leave Buy-Back (Pet. Prop. #28)**
- 16. **Haz Mat Supplement (Pet. Prop. #33)**
- 17. **Personal Vehicle Allowance (Pet. Prop. #35)**
- 18. **Elimination of Uniform Allowance (City Prop. #4)**

V. OUTSTANDING NON-ECONOMIC PROPOSALS

The parties' non-economic proposals include the following:

A. Term of Agreement Sought (Pet. Prop. #2)

As noted previously, the Petitioner seeks a two year award covering a period of time which has already elapsed. The City is not opposed to a two year, particularly if it receives relief in the area of health insurance. As will be discussed herein, the passage of this time period will render some of the proposals moot or otherwise incapable of being addressed adequately by this Panel.

B. New Section 207-a IOD Procedure (City Prop. #8)

C. Drug Testing Policy (Pet. Prop. #37/City Prop. #10)

D. Filling Vacancies (Pet. Prop. #14)

E. Filling Vacancies in Arson Investigation (Pet. Prop. #36)

F. Use of Alarm Office to Post Bulletins (Pet. Prop. #38)

VI. Proposals Resolved by This Panel.

The Panel has decided that, as much as is practical, the principal of parity will be applied in resolving this impasse. Aside from those proposals specifically addressed below, all other proposals, although carefully considered by the Panel, are rejected. Said proposals either add too great a cost

to the City, or impose significant conditions of employment upon bargaining unit employees, and can be better addressed by the parties in their next round of bargaining. This is particularly so for the City's proposals to change the IOD and Drug Testing procedures and agreement. It is this Panel's intent that all other conditions of employment for the employees of this unit, unless expressly addressed and decided by this Award, shall remain "status quo" until such time as they are modified by a future negotiated agreement or interest arbitration award.

A. Wages (Petitioner Proposal # 1 and City Proposal #13)

1. Positions of the Parties.

As noted earlier, 19 of the Petitioner's 24 proposals can be classified as entirely or partially economic in nature. Added to these are four (4) of the City's six (6) proposals. Initially, this Panel has observed that Buffalo Fire's expired agreement for the period July 1, 1996 to June 30, 1998 (Jt. 5), coupled with other terms and conditions of employment still in effect between these parties, contain a broad array of economic benefits for unit employees, summarized at length in the Pet. Ex. 2 and Petitioner's Brief at pages 17 through 26. The Petitioner seeks improvements in nineteen of these categories. The City has not expressed a need to reduce or curtail most of these benefits, save for a significant change in the health insurance benefit, elimination of the uniform allowance, and requiring retirees selecting health insurance and/or dental benefits to pay 50% of the premium. It is obvious that the cost of providing as comprehensive a package of economic benefits as is contained in the expired agreement cannot be ignored by the Panel. Nor can the Panel disregard the significant additional costs of providing the various new or improved benefits and compensation increases proposed by the Petitioner. Nonetheless, it does not necessarily follow that the unit has not proven the need for increases and/or improvements in some of these areas, or that the City cannot afford to

fund what the Panel believes to be the just and reasonable increases and/or improvements awarded below.

a. Petitioner. The Petitioner seeks a two-year agreement in which all employees will receive a COLA plus 2% or a 6% increase in each year of the agreement, whichever is higher. The Petitioner's principal argument here appears to be one of parity. In its view, the various charts and testimony presented at the hearing amply demonstrated that fire fighters are significantly underpaid as compared to Buffalo police officers. The Panel should take note that the Petitioner negotiated and agreed to a last minute agreement with the City for the period July 1, 1996 to June 30, 1998, which conceded to the City several benefits including dispatch civilianization.⁷ The Panel must reduce the disparities in earnings between Buffalo Fire and Buffalo Police, while maintaining the current health insurance coverages at City expense. It contends there are compelling reasons for awarding a 6 percent (6%) across-the-board salary increase in each of the two years of the Award: (1) Buffalo Police earn more than Buffalo Fire, even though Buffalo Police work significantly fewer hours than do Buffalo Fire; (2) the method of calculation of Buffalo Police hourly and overtime rates makes their rates higher than those of Buffalo Fire; (3) Buffalo police officers earn, on average, approximately four thousand dollars (\$4,000) more than fire fighters in overtime and court time pay. Yet those additional hours worked by police officers bring their annual total to the annual total hours worked by fire fighters. Parity would dictate that fire fighters earn more to close that gap.

b. City. The City maintains that the wages of City fire fighters, lieutenants, captains

⁷Under the October 27, 1998 Memorandum of Agreement, the Petitioner agreed to allow the City to replace Assistant Dispatchers in Local 282 with civilian dispatchers, by attrition. Those civilian dispatchers can be used to fill temporary vacancies created by the absence of a civilian dispatcher. The civilianization of dispatch in Buffalo Police has been ongoing. Dr. Milroy testified civilianization started on a two for one basis (i.e., 2 civilian replacing 1 retiring uniformed dispatcher), but moved to one for one in 2000-2001.

and battalion chiefs compare favorably with fire fighters in Albany, Binghamton, Rochester and Syracuse. Moreover, the top step fire fighter in Buffalo earns more than the top step fire fighters in any of these communities. Even factoring in wage increases effective July 1, 1998, Rochester pays its fire fighters \$642,000 less than Buffalo pays its fire fighters. Since Buffalo fire fighters already earn more in 1998 and 1999 than fire fighters in any of these communities, the Petitioner's 6% proposal is unjustified. Moreover, because the fire fighters have their health insurance fully paid by the City, their cost of living has not increased as much as the actual CPI for All Urban Consumers. Thus the changes in the CPI which include increases in medical care cost, does not justify the 6% increases sought by the Petitioner. The same conclusion must be reached for year two of this Award. Finally, if the Petitioner seeks to ask the Panel for 3% per year because the Buffalo Police received 3% per year for 1998-1999 and 1999-2000, the Panel should take note that those increases were the result of a negotiated agreement, not a panel award. No panel found that the 3%/3% increases were appropriate. Rather, those increases were *paid for* by negotiated concessions by the Buffalo Police. Here, the Petitioner refuses to grant any concessions, particularly in the vital area of health insurance. The public interest will not be served by granting the 6%/6% increases sought by Petitioner, given the City's limited financial resources. The City is amenable to 1%/1% increases which it believes are reasonable. However, any increases should be tied to a change in health insurance.

2. Panel's Opinion.

Parity between Buffalo Fire and Buffalo Police has been a controlling factor since as far back as the contract period July 1, 1974 through June 30, 1975. According to the Petitioner, absolute parity was maintained from 1975 to 1985 with base wage increases for Buffalo police and Buffalo fire being identical throughout that period. The City does not disagree. Parity between

Buffalo Fire and Buffalo Police faltered from 1985 through June 30, 1995. However, salary parity was restored by the Foster Panel Award effective July 1, 1995. For the period July 1, 1995 through June 30, 1996, Buffalo Fire and Buffalo Police received identical salary Awards through interest arbitration, with the Buffalo Police Award (Rabin Panel Award) following the award for Buffalo Fire (Lewandowski Panel Award). Dr. Milroy agreed that in his six years as the City's Budget Director, parity has been the rule for each of the settlements that have taken place (232 Tr. 11-20⁸).

As contended by the Petitioner, while Buffalo fire fighters perform a vital public service and engage in hazardous and often life-threatening job duties akin to police officers' public service, they do not presently enjoy parity with the Buffalo police. The evidence of record supports Petitioner's claim that Buffalo Police have worked fewer hours per year than Buffalo Fire (233 Tr. 2-16)⁹; enjoy a higher hourly rate for payments such as overtime, holidays and sick incentive due to the reduction in hours (235 Tr. 11 to 236 Tr. 15); effectively have the opportunity to earn more than fire fighters; work more overtime with resulting higher compensation; and receive greater retirement payments than fire fighters.

The Panel is of the opinion that a disparity does now exist between the wages of Buffalo Police and Buffalo Fire. It shares the view of prior Interest Arbitration Panels, particularly the Foster Panel (Jt. 3), that the criterion of parity between those two units is the most relevant factor to apply. The record is clear that both parties have historically attempted to treat Buffalo Fire and Buffalo Police the same, as much as practical. Here, the City is quite right in noting that the pay schedules

⁸All references to pages and lines of the hearing transcript are cited, herein, as "___Tr. ___."

⁹As of the 1992-1995 Buffalo Police settlement, Buffalo Police have worked a ten hour schedule for a total of 1948 hours per year, down from 2080. Buffalo Fire did not receive a similar reduction.

for Buffalo Police were reached as the result of a negotiated settlement with the City (Jt. 8). In that agreement, Buffalo Police received two 3% increases to base salary: one effective July 1, 1998 and the next effective July 1, 1999. Absent any plausible explanation for why parity should not apply (and the Panel does not believe the City seriously disputes the applicability of that doctrine here), the Panel is of the opinion that Buffalo Fire should receive no less than the wage increases granted to Buffalo Police. Money for that purpose has already been budgeted by the City. Moreover, because Buffalo Police work fewer hours per year and at a higher hourly and daily rate than Buffalo Fire, Buffalo Police effectively earn more than Buffalo Fire. Without increases for fiscal 1998-1999 and 1999-2000 comparable to those provided to Buffalo Police, Buffalo Fire wages will lag behind Buffalo Police. While prior Panels have also been faced with this fact, adopting the City's wage offer would further undermine wage parity between Buffalo Fire and Buffalo Police. Such a result would be both unreasonable and unjust, given the valuable services provided to City taxpayers by both groups. So too, adopting the Petitioner's wage proposal would be too costly, given the City's current financial condition which, in the Panel's view, is not as rosy as the Petitioner's witnesses suggest.

Thus, the Panel is convinced that Buffalo Fire are in need of a salary increase which attempts to return them to parity with Buffalo Police. However, we are not convinced that, given the City's limited ability to pay, coupled with the other economic improvements awarded herein, that an award reaching the levels sought by the Petitioner would be reasonable, even if just. Therefore, the Panel will award what it considers to be a fair and equitable salary, given the circumstances and evidence presented in this proceeding.

B. Health and Dental Insurance (Petitioner Proposal #5, 6, 21 and City Proposal #3 and 7)

1. Positions of Parties.

a. Petitioner. The Petitioner seeks an amendment to Paragraph 4 of Section 6.1 providing medical insurance, at no cost to the employee, to any unit employee(s) who retire during the period July 1, 1998 through and including July 30, 2000, or until a successor agreement is signed or an interest arbitration award is imposed. The health insurance would include Traditional New Language 60-62; MM7; \$5.00 - \$10.00 Drug Prescription Card; and Riders 41, 45, 47, 48, R4 and R8. Petitioner also seeks to amend Section 6.2 to replace the Spectrum Plus Plan with the Spectrum Preferred Plan. Finally, it wants the City to make an annual \$75,000 payment to the Petitioner's Health and Welfare Fund, payable no later than July 31 of each year, to reimburse the Petitioner for the expenses it incurs in administering this Fund. Its Proposal #5 seeks fully paid medical insurance coverage for all firefighters who retired during the period July 1, 1998 to June 30, 2000. The proposal seeks to address, in part, the disparity in pay and retirement benefits between Buffalo Fire and Buffalo Police. It also gives recognition to the shorter average life span of firefighters and of the higher incidents of cancer and other disabling illnesses and injuries suffered by firefighters as compared to police officers and others in the general public.

It strenuously opposes any lessening of health insurance benefits for unit employees. It objects to the City's proposal to significantly modify the health insurance benefits currently enjoyed by unit employees and 100% funded by the City. First, the time period to be covered by this Award has already passed. Thus, it would be unjust to now require that unit employees pay for premiums already paid for by the City and for whom coverage has already been provided. The Petitioner's

retention of the current health insurance coverages was the result of its agreement to make concessions to the City in 1996 for the civilianization of dispatch, and the parties' commitment to seek health insurance cost savings through meaningful negotiations. In its view, the City reneged on its commitment in the October 27, 1996 Memorandum of Agreement (Jt. 5) to engage in meaningful negotiations to effectuate health care cost savings. Its contract proposals demand concessions which exceed those in place for Buffalo Police. Nor has the City been willing to engage in a discussion of the viability of the so-called Board of Education Plan. It even deleted certain riders being offered to the unit as negotiations progressed.

b. City.

This proposal seeks to make major changes in the health insurance benefits provided by the City to employees, retirees and employees hired after July 1, 1998, and the funding of such coverage.

Effective July 1, 1998, the medical insurance plan options available would include:

- (a) Blue Cross/ Blue Shield New Language 60/61 Select Plan with Pre-Care Rider, major medical Deductible \$100/\$200; Rider 14 (In-patient Rehab), Rx Plan \$5/\$10 (Generic/Brand Name). Dependents to age 23 (regardless of student status)
- (b) Independent Health Gold Plan; Co-Pays \$8. Rx Plan \$7, Dependents covered to Age 19/Students to Age 23
- (c) Community Blue I, with Advantage option; Co-Pays \$5/\$10 for Specialist, Rx Plan \$7. Dependents covered to Age 19/Full-time students to Age 25
- (d) Health Care Plan Premier; Co-Pay \$5. Rx Plan \$5. Dependents covered to Age 19/Full-time Students to Age 25

The cost to be paid by the City would be 100% of the average cost of the two lowest priced plans for active employees and retirees. Employees and retirees choosing one of the more expensive

plans would contribute the difference in premiums between the plan chosen and the average cost of the lowest two plans, regardless of whether or not health insurance companies merge or eliminate a plan(s). Said payments would be made through payroll deductions.

For employees hired on or after July 1, 1998, said employees will contribute 25% of the average cost of the two lowest cost plans (single coverage) or 15% of the average cost of the two lowest cost plans (family coverage). In addition, a new hire choosing a more expensive plan will be required to pay the differential between that plan's premium and the average of the two lowest cost plans' premiums.

The proposal also seeks to add additional language to Section 6.1(b) regarding the City's right to change health insurance, drug prescription, and/or dental insurance providers to offer comparable coverage. It would be under no obligation to provide coverage no longer available from the insurance companies. "In lieu of" payments of \$500 (Single) and \$1000 per year (Family) would be made on June 30 each year, with only one waiver of medical insurance "in lieu" in any given 12 month period.

Effective July 1, 1998, the Dental Insurance language of Section 6.2 would be replaced, substituting GHI Spectrum Plus Dental to unit employees, with the City reserving the right to self-insure and/or to provide comparable coverage through a different insurance company. Changes in the "in lieu" payments for current employees and retirees are also sought.

A new Section 6.2(a) would be added under which the City would agree to make a Section 125 Flexible Spending Account available to unit members to allow them to tax defer any applicable contributions.

The City vehemently contends it needs the major health insurance changes proposed and

explained in detail in its post-hearing brief. In summary, it notes that Buffalo Fire is the only remaining City union that has fully employer-paid traditional health insurance benefits. While the City seeks to have Buffalo Fire obtain health insurance benefits at the levels provided to other City unions, Petitioner will not even agree to health insurance levels and conditions currently provided for Buffalo Police, despite its claims that parity with Police should be utilized by the Panel in setting wages and other compensation. In its view the Panel should impose the health insurance benefit changes imposed on Buffalo Police by the Rabin Panel Award (City 14, at p. 10-11) and on newly hired police by the 1998-2000 Memorandum of Agreement (Jt. 8). Pursuant to the Rabin Panel Award in Buffalo Police (City 14, at p. 10-11), police officers now pay 25% of the difference between the premium of the second lowest of the lowest two health insurance plans and the higher cost plan that employee selects (if single coverage) or 15% of the differential (if family coverage selected). And police officers hired after June 30, 1998 are required to pay the full differential if they select either of the two higher cost plans.

The City argues that the wage increases and longevity benefit sought by Petitioner should be granted only if the City gains the health insurance relief sought in these proposals. If parity means anything, it should be applied to attempt to equalize not only wages and other compensation, but also health insurance coverage and funding between Buffalo Fire and Buffalo Police. The Panel should not allow the Petitioner to use parity as both a sword and a shield.

The City also opposes the Petitioner's proposal seeking a payment of \$75,000. It views the proposal as an unwarranted attempt to simply add to the \$75,000 payment for optical insurance agreed to by the City in the 1998 Memorandum of Agreement.

As for the Petitioner's Dental Insurance upgrade proposal, the City is in need of cost-savings

in health and dental plans, not an increase in expenses. No other City union has the "Spectrum Preferred" plan except AFSCME Local 264. But that Local accepted the health insurance plan offered by the mayor and received no wage increase for one year. The only situation in which the City would agree to the upgrade would be if Petitioner agreed its members would pay the difference in premium cost.

Finally, the City addressed Petitioner Proposal # 5 and City Proposal #7 concerning health insurance upon retirement. It is opposed to the Petitioner's attempt to increase the level of benefits to be provided to retirees to include major medical. First, it is a benefit not enjoyed by retirees of Buffalo Fire. Thus, parity does not require it be provided to Buffalo Fire retirees. Second, the City seeks to decrease its overall medical insurance costs. Granting this proposal would cut against that goal. There is no compelling reason for providing this added level of benefit. The City offered no justification for its Proposal #7.

2. Panel's Opinion.

The Panel is convinced that, despite the Petitioner's vehement opposition to firefighters being made to pay for any share of their health insurance benefit, some relief in this area is warranted and will be awarded, prospectively, from the final date of the period covered by this Award.

In arriving at this conclusion, the Panel was persuaded by several key factors. First, as maintained by the City, Buffalo Fire is the last City union receiving fully paid traditional health insurance. Among these, even the Buffalo Police, against whom the Petitioner asks to be compared on matters such as wages and hours of work, etc., are required to pay a share of the cost of the two more expensive health insurance plans available to employees. In addition, the obvious savings to the City in not having to pay the full premium for those firefighters selecting the most expensive plan,

can be utilized to help fund the wage increases awarded herein. The reality is that health insurance costs continue to rise at a time when the City financial situation remains heavily dependent upon State aid. All other City unions, and most particularly Buffalo Police, now pay a share of the cost of their health insurance, if those employees opt for either of the two higher cost plans now offered by the City. Nor is the Panel persuaded that the civilianization of dispatch, agreed to by Petitioner in 1998, has resulted in significant cost savings. As noted by Dr. Milroy, the City utilized that agreement, at least in the first year of its existence, to replace uniformed dispatch with civilians on a two for one basis. Thus, the Department was able to secure additional staffing, for the a similar cost, thereby reducing the need to use overtime. Indeed, the Petitioner recognizes that Buffalo Police have utilized civilian dispatchers for several years, but have, nonetheless been required to pay for a share of their health insurance.

Thus, the Panel finds that parity between Buffalo Police and Buffalo Fire in the area of health care should be a controlling principal. Hence, the Panel finds that a modest modification in the health insurance benefit would be reasonable and just under all the circumstances. However, it agrees with the Petitioner that it would work an unfair hardship on unit employees to make the modifications effective at the start of the period covered by this Award. The remainder of the health and dental insurance proposals will be denied.

C. Shift Differential. (Pet. Prop. #3)

1. Positions.

a. Petitioner.

Petitioner urges the Panel to adopt its shift differential proposal for several reasons. First, it contends Buffalo Police are paid a \$.15 per hour differential for afternoon and midnight shifts.

Parity would demand that Fire and Police be treated the same in this regard. Second, since shift differential is folded into the overtime rate, another disparity between Police and Fire is created. Finally, since Buffalo Police effectively earn more money than Buffalo Fire, granting the requested shift differential will partially remedy the differences in hours worked by Fire and by Police.

b. City.

The City opposes this addition to regular wages for several reasons. First, Buffalo Fire works on a rotating basis. Buffalo Police do not. Since all Buffalo Fire work thirty (30) hours each tour between the hours encompassed by this proposal, the base wages of all firefighters would be increased 3 1/3 % if the Panel awards what Petitioner seeks. The demand is excessive. Second, a prior Panel, in rejecting a prior Local 282 proposal for a shift differential, has recognized the inherent difference between the schedule of Buffalo Police (some of whom work an undesirable shift as their regular tour and receive a differential for that inconvenience) and Buffalo Fire, all of whom work the 1700 to 0800 tour on a rotating basis (See, Foster Panel. Jt. 3, at p. 22-23). That rationale should be adopted here. The proposal should be denied.

2. Panel's Opinion.

The Panel has considered the Buffalo Police contract and the arguments of the parties in support of and in opposition to the addition of a shift differential as proposed by the Petitioner. However, the Panel is of the opinion that a shift differential is not warranted. We find no merit in the Petitioner's assertion that the differential should be granted to partially offset the disparity between Fire and Police incomes and work hours, although those disparities do need to be addressed elsewhere in our Award. The Panel will award that this proposal be denied.

D. Daily Pay Rate (Art. III, Section 3.10)

1. Positions of Parties.

a. Petitioner.

Petitioner maintains that this proposal should be granted to arrive at a daily rate of pay which more accurately coincides with the actual work schedule. The existing formula artificially lowers what the true rates should be. Its post-hearing brief clarified that the hourly rate calculation sought, explaining it would be the daily rate divided by eight (8) hours.

b. City.

The City opposes this demand which it views as a further attempt to increase base wages beyond what is reasonable. To the extent the Petitioner argues this proposal will equalize Buffalo Fire with how Buffalo Police are treated, the differences in Fire and Police schedules have existed for a considerable period of time and have been accepted in the past by these parties and by prior panels in determining the then existing levels of compensation and benefits. The Petitioner failed to provide any compelling reason for changing this provision.

2. Panel's Opinion.

Notwithstanding what other panels may have held in the past, this Panel believes some adjustment in the computation of hourly and daily rates must be made if Buffalo Fire is to ever approach parity in compensation with Buffalo Police. There is sufficient evidence in the record to realize that various payments to Buffalo Police are dependent, not upon their annual base salary, but rather upon their hourly or daily rate. Since Buffalo Police work fewer hours per year (1948) than Buffalo Fire (2080), their hourly and daily rate is greater for calculating payments such as court time, holiday pay and other benefits paid on the basis of hourly rate. The differences in the obligations of

Buffalo Police and Buffalo Fire make it imprudent for the Panel to change the schedules or hours of Buffalo Fire to correspond more closely with those of Buffalo Police, although the parties are, of course, free to negotiate a feasible change in the future. The Panel will adopt the Petitioner's Prop. #4, paragraph 1 only. The award will be prospective from June 30, 2000 or until modified by a negotiated agreement or future interest arbitration award.

AWARD

The Panel renders the following Award:

1. Duration of Award.

This Award will run from July 1, 1998 through and including June 30, 2000.

2. Wages.

Effective July 1, 1998, 3 % will be added to the base salary of all bargaining unit employees.

Effective July 1, 1999, 3 % will be added to the base salary of all bargaining unit employees.

3. Health Insurance.

a. Effective June 30, 2000, existing employees selecting to receive either of the two higher cost plans will pay 25% of the differential between the premium of the second lowest of the lowest two health insurance plans and the higher cost plan that employee selects for single coverage, or 15% of the differential for family coverage, on a pre-tax basis.

b. All employees hired into the bargaining unit on or after June 30, 2000 and electing health insurance coverage from the City shall be required to either:

(1) Select either of the two (2) lowest cost plans to be fully paid for by the City; **or**

(2) Pay the full cost of the difference between the second lowest cost plan and the higher cost plan selected by the employee, on a pre-tax basis.

c. Said provision will remain in effect until a new agreement on the subject is negotiated and agreed to, or until another Interest Arbitration Award is issued on the subject.

4. Longevity.

Effective retroactively to July 1, 1999, each bargaining unit employee who has completed at least one year of service shall receive annually, in addition to his or her salary, one hundred twenty-five dollars (\$125.00) longevity payment for each completed year of service, to a maximum of twenty-five (25) years.

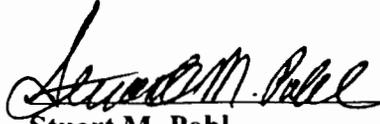
5. Daily and Hourly Pay Rate.

The Petitioner's Proposal #4, paragraph 1 only, is adopted, effective June 30, 2000, or until modified by as negotiated agreement or future interest arbitration award.

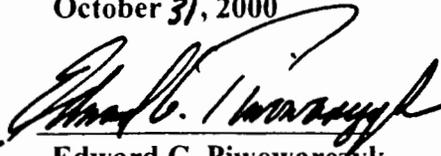
Date: October 25, 2000

October 31, 2000

October , 2000



Stuart M. Pohl
Panel Chair



Edward G. Piwowarczyk
Public Employer Member

Vincent Gugliuzza
Employee Organization
Member

State of New York)

SS:

County of Erie)

On this 25th day of October, 2000, before me, the subscriber, a Notary Public of the State of New York, personally came and appeared Stuart M. Pohl, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged that he executed the same which is the Panel's Opinion and Award.



Notary Public

PAULA PIRRONE ZEISZ
Notary Public in the State of New York
ERIE COUNTY
Commission Expires 01-27-01

State of New York)

SS:

County of Erie)

On this 31st day of October, 2000, before me, the subscriber, a Notary Public of the State of New York, personally came and appeared Edward G. Piwowarczyk, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged that he executed the same which is the Panel's Opinion and Award.

PATRICIA M. CASEY
Notary Public, State of New York
Qualified in Erie County
Commission Expires April 14, 2000-2002



Notary Public

On this _____ day of October, 2000, before me, the subscriber, a Notary Public of the State of New York, personally came and appeared Vincent Gugliuzza, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged that he executed the same which is the Panel's Opinion and Award.

Notary Public

OFFICERS
VINCENT GUGLIUZZA
President
ANTHONY PAGE
1st Vice President
WILIP WOODS
2nd Vice President
DANIEL CORCORAN
Recording Secretary
SALVATORE COLANGELO
Financial Secretary
DANIEL O'CONNOR
Treasurer
DONALD PETSCHKE
1st Sergeant-At-Arms
GREGORY WISNIEWSKI
2nd Sergeant-At-Arms

Buffalo Professional Firefighters Association, Inc.

Affiliated with
International Association of Firefighters
Buffalo Council AFL-CIO
New York State AFL-CIO
Maritime Trades-Buffalo Port



LOCAL 282 AFL-CIO-CLC
255 DELAWARE AVE.
BUFFALO, N.Y. 14202
Telephone: (716) 856-4130

TRUSTEES
JOANNE WOODS
1st District Trustee
RICHARD GOODMAN
3rd District Trustee
HERIBERTO BAEZ
4th District Trustee
JERRY ZULAWSKI
6th District Trustee
PAUL MULHERN
7th District Trustee

November 8, 2000

Stuart M. Pohl
Arbitrator – Mediator
69 Forestview Court
Williamsville, New York 14221-1445

Edward G. Piwowarczyk
Jaeckle Fleishmann & Mugel, LLP
Fleet Bank Building, Twelve Fountain Plaza
Buffalo, New York 14202-2292

Public Employee Relations Board
125 Main Street
Buffalo, New York 14203

RE: The Interest Arbitration Between the
City of Buffalo and Buffalo Professional Firefighters Assn.
PERB Case No. IA099-024; M99-210

Dear Honorable Panel Members:

Enclosed please find my statement of dissent from the award in the above referenced case.

If you have any questions regarding this matter, please contact me at my office, (716) 856-5130. Thank you.

Sincerely,

Vincent R. Gugliuzza

VRG/jar

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CONCILIATION

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BUFFALO OFFICE

NEW YORK STATE
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Interest Arbitration

Between

CITY OF BUFFALO, NEW YORK

-and-

BUFFALO PROFESSIONAL FIREFIGHTERS
ASSOCIATION, LOCAL 282

DISSENT

PERB # IA99-024
M99-210

NOV 9 2000
BUFFALO OFFICE

On November 6, 2000, Chairperson Stuart M. Pohl mailed to me the Panel's Final Award executed by Messrs. Pohl and Piwowarczyk. I respectfully dissent from the Award for reasons set forth below.

Pursuant to Section 209.4 of the New York State Civil Service Law, the compulsory interest arbitration panel was required to specify the bases for its findings and to take into consideration all relevant factors including:

(v) . . .

- a. Comparison of the wages, hours, and conditions of employment of the employees involved in the arbitration proceedings 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; (5) job training and skills.

The majority of the Panel finds the City firefighters unit to be comparable to the Buffalo police unit, a finding with which I agree. And, the majority of the Panel finds that parity between Buffalo Fire and Buffalo Police has been a controlling factor since at least July 1, 1974. I also agree with this finding. Where I disagree, however, is in the Panel's application of parity.

The majority of the Panel states that the criterion of parity between the police and fire units is the most relevant factor to apply. In fact, the Panel expressly notes that the "record is clear that both parties have historically attempted to treat Buffalo Fire and Buffalo Police the same, as much as possible."

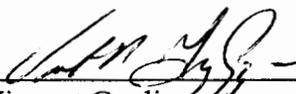
Police and fire within the City are no longer treated the same. Police work significantly fewer hours than fire, make significantly more per hour than fire, and are paid more for overtime, holiday pay, and other hourly and daily paid items. This is not parity. A police officer who elects to work as many hours as a comparable firefighter earns at least \$4,000 more per year than his firefighter counterpart. If that same police officer elects not to work the same number of hours as worked by a firefighter, he will nonetheless still earn more than a firefighter since a firefighter does not receive shift differential, is paid less for holiday pay, etc. The Panel has made a mockery of the concept of parity.

While the majority of the Panel finds the City has the ability to pay, it has not taken any significant steps toward addressing the pay disparity. For some unstated, inexplicable reason, a majority of the Panel rejects the union proposals that address the disparity issues. Yet, a majority of the Panel finds it appropriate to widen the gap by directing that firefighters partially fund their health insurance coverages.

The Panel's award is not a just and reasonable determination of the matters in dispute.

For the above reasons and reasons expressed in executive session, I must dissent.

Dated: November 7, 2000



Vincent Gugliuzza