

BOARD OF COLLECTIVE BARGAINING

In the Matter between

UNIFORMED FIREFIGHTERS ASSOCIATION
OF GREATER NEW YORK

-and-

I-210-92

CITY OF NEW YORK

BEFORE THE IMPASSE PANEL:

Mark M. Grossman, Chairperson
Philip Ross, Member
Carol Wittenberg, Member

APPEARANCES:

FOR THE/UNIFORMED FIREFIGHTERS ASSOCIATION:

Axelrod, Cornachio & Famighetti, Esqs.
Labor Counsel
by Michael C. Axelrod, Esq.

-and-

James Boyle, President,
William P. Moore, Vice-President
Charles J. Bohan, Rec. Secy.
John J. Aragona, Treasurer
Gerald D. Carolan, Sergeant-at-Arms
Carmine A. DeRoss, Jr., Trustee-Staten Island
and Chairman, Board of Trustees
Thomas LaMacchia, Trustee-Bronx
Kevin E. Gallagher, Trustee-Brooklyn
Michael A. Carter, Trustee-Manhattan
William F. Mirro, Trustee-Queens
John E. Knox, Fire Marshall Representative

FOR THE CITY OF NEW YORK:

Skadden, Arps, Slate, Meagher & Flom
Special Counsel to the NYC Office of Labor Relations
by Michael M. Connery, Esq.

-and-

James Hanley, Commissioner, NYC Office of Labor Relations
Gayle A. Gavin, General Counsel, NYC Office of Labor Relations

BACKGROUND

The Uniformed Firefighters Association of Greater New York (the "UFA") and the City of New York ("the City") submitted to the undersigned as an impasse panel (the "Panel") for a report and recommendation issues which they have been unable to resolve in their negotiations for a contract to cover the 15 month period of July 1, 1990 through September 30, 1991.

On August 8, 1990 the City and the UFA began bargaining for a successor to their 1987-1990 collective bargaining agreement which expired on June 30, 1990. After receiving the assistance of a mediator, the parties reached a tentative agreement on a contract on September 10, 1992. That agreement was not ratified by the UFA. Thereafter, the parties jointly agreed that they were at impasse and submitted a Request for Appointment of an Impasse Panel to the Board of Collective Bargaining ("BCB"), the City on May 6, 1992 and the UFA on May 21, 1992. The Board of Collective Bargaining declared the existence of an impasse and appointed the Panel consisting of Mark Grossman, Philip Ross and Carol Wittenberg. Mark Grossman was selected as the Chairman of the Panel.

On July 23, 1992 the Panel held a pre-hearing conference with the parties at which time the hearing schedule was set for November 9 through 15, 1992. These dates were adjourned upon request of the UFA and additional hearing dates were scheduled for November and December. The UFA presented its direct case on November 30th; the City presented its direct case on December 19th and 20th.

The parties were afforded a full and fair opportunity to present evidence and argument in support of their respective positions. The UFA called the following witnesses: James Boyle, UFA President; John Knox, UFA Fire Marshall; Thomas La Macchia, UFA Trustee; John Aragona, UFA Treasurer, and Daniel Senecoff, UFA Actuary. The City called the following witnesses: Philip R. Michael, Director, Office of Management and Budget (OMB); James Hanley, Commissioner of Labor, Caroline Sullivan, Deputy Commissioner for Employee Benefits, Office of Labor Relations; Bernard Rosen, First Deputy Director, OMB; and Robert North, Chief Actuary of the City of New York.

A transcript was prepared of the hearing and presented to the Panel. The parties submitted pre-hearing and post-hearing briefs as well as numerous exhibits. Post-hearing briefs were received on January 14, 1993.

Prior to the commencement of the hearings in this proceeding, collective bargaining agreements covering the 1990-1991 period had been concluded between the City and various unions covering 91% of the City's employees. Some of these agreements were the result of direct negotiations between the parties while other agreements were based upon awards issued by other impasse panels.

The increased costs generated by the collective bargaining agreements covering the 1990-1991 round of bargaining were funded by available funds of 1.5% from FY 1991 labor reserve plus 1.52% (1.5% compounded) from the FY 1992 labor reserve plus apportioned savings resulting from reductions in the City's pension contributions to the particular pension fund and savings generated by the particular union involved.

For the purposes of this proceeding, the UFA and the City have agreed that a pattern settlement for the uniform forces was established by the award issued by the impasse panel in case I-203-91 between the Patrolmen's Benevolent Association (the "PBA") and the City. The PBA Award provided for a package of available funds 1.5% from the fiscal year 1991 reserve, 1.52% (1.5% compounded) from the fiscal year 1992 labor reserve, saving generated by a change in the interest rate assumption of the PBA Pension Fund and other savings by the PBA for the 1990-91 contract period. The PBA Award provided for the following increases:

Term:	15 months (July 1, 1990 - September 30, 1991)
Wages:	3.5% effective July 1, 1990 1% (compounded) effective July 1, 1991
Welfare Fund:	Additional \$100 contribution effective July 1, 1990
Annuity Fund:	Additional \$1/day (\$261/year) contribution effective July 1, 1991
Longevity:	Additional \$1,000 added to each existing step
Legal Fund:	Additional \$25/year contribution effective July 1, 1990

The cost of these benefits as set forth in the PBA Award was:

Wages:	3.5%	July 1, 1990	3.50%
	1.0%	July 1, 1991	1.00%
Welfare Fund:	\$100	July 1, 1990	30%
Annuity Fund:	\$1/day	July 1, 1991	.34%
Longevity:	\$1,000	July 1, 1991	1.45%
Legal Fund:	\$25	July 1, 1990	.04%
		<u>total cost</u>	<u>6.63%</u>

The funding of the 6.63% additional benefits was ordered by the PBA Panel to be as follows:

Budgetary Funds	3.02%
Interest Rate Assumption in Police Pension Fund from 8.25% to 8.50%	1.06%
Wage Freeze (first five steps of salary schedule for New Hires Effective July 1, 1991	.77%
Reduction of Night Shift Differential for New Hirees: No NSD in Academy, thereafter 55% until 1st Grade Effective July 1, 1991	.56%
Rescheduling of Tours to Prevent <u>Overtime</u>	<u>1.22%</u>
<u>total funding</u>	<u>6.63%</u>

ISSUES BEFORE THE PANEL

Because of the long delay. in reaching an agreement for the 1990-1 time period, the UFA and the City agreed to expedite these proceedings by limiting the number of hearing days, restricting the length of pre-hearing and post-hearing briefs and limiting the issues presented to the Panel. The issues which were emphasized in the parties' presentation to the Panel were:

- increased benefits - wages, welfare fund, legal representation fund and annuity fund;
- credit for changes in the UFA pension fund;
- additional offsets, if any, to fund any increase in benefits;
- impact of reduced work schedule
(a question of the Panel's jurisdiction has been raised by the UFA regarding this matter)
- promulgation of vacation chart
- vacation and leave - Fire Marshalls
- quartermaster/uniform allowance; and
- the time permitted to raise a grievance.

ECONOMIC SUBJECTS

The parties were able to enter into a number of important stipulations to expedite the hearing process. Those stipulations included the value of most of the increases in the benefits and potential offsets under consideration, that employment as a New York City firefighter is an inherently dangerous occupation, and that a wage parity between the maximum salary of the firefighters and the police officers employed by the City has existed since 1898.

The UFA seeks to accomplish a number of goals in these proceeding including:

- retaining the "parity" which exists at the top salary grade between police officers and firefighters;
- restructuring the PBA Award to suit the UFA's needs;
- getting away from attrition-driven new hire items that give UFA less value [than the PBA];

- realizing more value for the change in the assumed interest of their pension fund rate than the .85% ascribed to it by the City;
- avoiding including non-mandatory subjects as part of package (or any options); and
- avoid giving the City any credit for the November 18, 1992 BCB scope decision restoring the 25 Group Chart.

In order to meet its goals, the UFA proposes that the Panel award a package containing an increase of 5.04%. Because the UFA wants to minimize its givebacks, it proposes a package of benefits which are less than the package received by the PBA. Because of the limited duration of this contract, the UFA is currently not seeking an award on longevity similar to that obtained by the PBA. Because the longevity increase would have a substantial cost to the firefighters, the UFA has decided to seek that increase in the next round of bargaining.

The UFA proposes that the panel's award consist of the following benefits:

	<u>BENEFIT</u>	<u>COST</u>
Term:	15 months (July 1, 1990-September 30, 1991)	
Wages:	3 1/2% effective July 1, 1990 1% (compounded) effective July 1, 1991	4.54%
Welfare Fund:	Additional \$100 contribution effective July 1, 1990	.30%
Annuity Fund:	Additional \$1,000 lump sum	.17%
Legal Fund:	Additional \$25/year contribution effective July 1, 1990	.03%
	<hr/> total cost	<hr/> 5.04%

The City has no objection to the UFA's benefit package provided its direct cost is funded by the budgeted funds, value of the assumed rate change and offset (givebacks) and the fact that the firefighters will be working 39.6 hours less a year is factored in as an economic benefit.

As noted previously, the UFA stipulated that any additional monies beyond the amount budgeted for collective bargaining purposes must come out of pension changes and/or

offsets. In accordance with that stipulation, the UFA suggests that funds for the 5.04% contract cost be paid for as follows:

Budgeted funds	3.02%
Assumed Rate (increase from 8.25% to 8.50% effective 7/1/90)	.85%

This totals 3.87% and the City agrees on those sources and calculation are appropriate for partial funding of the benefit increases.

The UFA also suggests the additional 1.17% come from among the following:

Credit for the increase in the assumed rate 8% to 8.25% effective 7/1/90	1.43%
Credit for the change in asset valuation method effective 7/1/90	.61%

This additional funding brings the total to more than necessary. The UFA further proposes that the balance of funds generated that are in excess of the requested benefit package be applied as a credit in the next round of bargaining. The City objects to the UFA getting any credit for pension fund changes beyond the change from 8.25% to 8.50%.

The City's goals are to:

- get the panel to consider its precarious fiscal condition and limit the award to available funds;
- limit the award to the pattern established for the 1990-91 round of bargaining;
- obtain a declaration that the City has the right to return to the longevity schedule that existed prior to the 1989 UFA Award; or in the alternative obtain consideration for the fact that the firefighters will be working 39.6 hours less as a result of going back to the 25 Group Chart;
- ensure that the UFA does not receive any additional credit in this award because of the 1989 BCB scope decision;
- limit the entitlement of the change of the interest rate assumption to the credit for 8.25% to 8.50%;

replace the uniform allowance system with the quartermaster system; and limit the time in which a grievance may be raised.

The City proposes that the longevity be reduced to the value given while the 25 Group Chart was worked (or other consideration be given) and provide the additional 1.17 % needed to fund the benefit package in one of two ways:

Option #1

Fire Salvage Credit	.14%
Reduction of 15 hours of annual leave for all employees effective 4/1/93	.60%
Additional annual leave reduction for employees hired after 12/31/92	.38%
Elimination of time off for the donation of blood	.05%
total	1.17%

Option #2

Fire Salvage Credit	.14%
Freezing the first five steps of the salary schedule for employees hired after 6/30/91	.50%
Reduction in night shift differential for employees hired after 12/31/92	.22%
Elimination of personal leave day accrual effective 7/1/93	.31%
total	1.17%

MONIES AVAILABLE FROM PENSION FUND CHANGES

There are two issues in dispute between the parties relating to the New York City Fire Department Pension Fund. The first issue concerns the change in the interest rate assumption and the second issue relates to a change in the asset valuation method.

Attention is turned first to the interest rate assumption issue. As background it should be noted that the interest rate assumption was legislatively changed from 8% to 8.25% in the

prior round of bargaining and the resulting savings from the reduced City contribution were used to prevent layoffs.

As to this round of bargaining, the Chief Actuary of the New York City Fire Department Pension Fund reported that an actuarial interest rate assumption increase was again reasonable and justified. The City suggested that for this bargaining round the interest rate assumption could be further changed to 8.50% and the savings could be used to offset some of the increased benefits. Such increase would result in a \$9 million reduction in the City's contribution which would have otherwise have to be paid to the pension fund in 1990-91. The change to 8.50% could only be made through legislation.

At first the UFA declined to support the change. However, the UFA changed its position after its President received the following letter from the City's then Deputy Labor Commissioner:

As you know, A.8619 is pending in the Senate and Assembly. The enactment of A.8619 into law will decrease the City's contribution to the Fire Pension Fund. The commencement date of the availability of the portion of the savings attributable to your union realized by the City from the enactment of A.8619 into law, and thereby available for collective bargaining, will be the same as the commencement date of your successor contract, July 1, 1990. If we cannot agree as to the translation of those savings into an amount which is available for collective bargaining, this issue of the amount of savings attributable to your union from the enactment of A.8619 into law may be submitted to impasse pursuant to the New York City Collective Bargaining Law.

The UFA maintains that section 55 of Chapter 58 1, paragraph C, which changed the assumed interest rate from 8% to 8.25% was only intended to cover a two year period and had a sunset provision. The assumption rate was therefore automatically to revert to 8% in the event additional legislation was not enacted.

The UFA argues further that it is entitled to full credit for the savings that the City received on the assumption rate. Testimony established that the union trustees voted to approve the change solely based upon the receipt of the letter given to the UFA. In view of the fact that the UFA and the Uniformed Fire Officers were the only unions to produce a documented letter indicating that the sums would be eligible for consideration by this panel, the UFA deserves full

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credit. The fact that other unions have not sought to recoup

the city's windfall for the 8% to 8.25% fund increase should not prejudice the UFA in its legitimate attempt to do so.

In response to the UFA positions, the City asserts that the UFA is entitled only to credit for the 8.25% to 8.50% change in the interest rate assumption. The City bases its position on the following:

- 1) it only consented to submitting the issue of the amount of savings generated by the FY 1991 change from 8.25% to 8.50% to the Panel; the letter only agreed to use the calculation of the savings generated from the change in the interest rate assumption from the passage of A.8619, the bill raising the interest rate assumption from 8.25% to 8.50%;
- 2) the same letter was given to the Uniformed Fire Officers and the PBA; in fact, the PBA raised its letter in its impasse proceedings in order to increase its share of the savings generated from the change in the interest rate assumption, but did not prevail;
- 3) no other union received credit for the FY 1989 interest rate assumption change in this round of bargaining; and 4) the interest rate would not have sunset to 8.00%; any UFA argument to the contrary is at best speculative and at worst misleading; there is no credible evidence to support the UFA's claim that the interest rate assumption would have reverted back to 8.00%.

The second pension issue relates to change in the actuarial valuation method. Chief Actuary North introduced a new methodology in an effort to better reflect the market value and to dampen the volatility of the funds. The UFA claims that it is entitled to credit for the savings generated by the new method. The City notes that: 1) this change was not legislative and thus not covered by the above-quoted letter; 2) the valuation method is one of a number of actuarial asset calculations and not meant to generate funds; 3) to the extent that the change did generate savings, such savings were offset by actuarial losses; and 4) no other union in this round of bargaining funded a contract by savings generated from a change in the asset valuation method despite the fact that all of the unions' retirement systems had the same change. The City argues that the panel should deny the UFA's effort to create a nonexistent funding source and require the contract to be funded according to the pattern.

JURISDICTION ISSUE

1) background to prior contract provision

The City and the UFA reached an impasse in their negotiation for a 1987-90 collective bargaining agreement. They submitted their impasse to the BCB for establishment of an impasse panel and a determination of what issues could be presented to such a panel. An impasse panel was established, hearings were held and, on April 14, 1989, that panel issued its award (the " 1989 UFA Award"). The 1989 UFA Award gave the UFA membership the choice of selecting either of two options.

The reason that the 1989 UFA Panel issued a decision with options was that it was aware that it might not be dealing with only mandatory bargaining subjects. The City consented to the 1989 UFA Impasse Panel dealing with the subjects involved in these options. The choice of accepting option #1 was left entirely to the UFA membership with the proviso that if option #1 was not accepted within 30 days of the receipt of the award, option #2 would automatically apply. (Option #2 did not contain any reference to nonmandatory subjects.)

Option #1 included a chart change which, after all elements were considered, resulted in firefighters working 39.6 additional hours per year (referred to as the 25 Group Chart). The panel went on to calculate the savings to the City and to include those savings as offsets against increased benefits.

The 1989 UFA Impasse Panel also stated that

In the event the above change of hours shall be adjudged to be invalid on its face or in its application by a court of competent jurisdiction, the City's obligation to continue the increased longevity differentials awarded herein shall cease nunc pro tunc and the parties shall be required to negotiate the impact of such adjudication on the continuation of said longevity.

The UFA membership voted to accept Option #1, but subsequent to that acceptance an action was filed in court challenging the right to vary the prior schedule (referred to as the "24 Group Chart") which is referred to in the Administrative Code Section 15-112. The court held the chart in the administrative code could be varied only with the consent of the firefighters and that the acceptance of the Option #1 by the UFA membership

constituted such consent. See Carolyn v. Mancuso, No. 14280/89, N.Y. Sup. Ct. (Nov. 8, 1989).

2) chart issue raised before the BCB

Prior to the commencing of the hearings before this Panel, the UFA filed a petition with the Board of Collective Bargaining of the New York City Office of Collective Bargaining (the "BCB") to declare two items in the 1987-90 contract nonmandatory subjects of bargaining and, therefore, not proper subjects for submission to this Panel. One of the two items was the contract provision, Article III, SS I and 5A, which provided for the 2127.6 hour work year, the 24 Group Chart.

On November 18, 1992, BCB issued its Decision No. B-44-92 Docket No. BCB- 1513-92 ("BCB scope decision") in which it held that "...to the extent that the terms of article III, SS 1 and 5A of the Agreement has the effect of altering the work schedule to one other than a 25 Group Chart, the matter concerns a nonmandatory subject of bargaining."

3) Panel's jurisdiction in dispute

The City attempted to raise before this Panel, matters that pertained to the fact that the firefighters will be working 39.6 hours less as a result of the BCB Scope Decision.

The UFA has vigorously objected to the panel even considering these arguments.

As we understand the City's position, it is twofold. First, the City asserts that the condition mentioned in the 1989 UFA Award occurred (a court of competent jurisdiction has held the change of hours to be invalid) and that the City is therefore entitled to discontinue the increased longevity awarded. Second, the City presented an alternative argument. It states that the City will lose the value of 39.6 hours work per year and that the Panel should address that loss in areas such as longevity and/or time off.

The UFA objected to the presentation of both of these issues on the basis that the panel has no jurisdiction to consider them. The UFA stated that "disputes as to the scope of collective bargaining are to be determined by the [BCB], not by impasse panels."

The Panel agrees that the BCB is given the statutory authority function to determine what matters may properly be presented and therefore considered by an impasse panel. The Panel believes that the preferable approach is to have the BCB rule on any objections to

the Panel's jurisdiction prior to the Panel making any determination of the issues involved rather than subsequent to such determinations. On January 23, 1993, the Chairman of the Panel wrote to the parties informing them that, in the absence of a BCB decision, the Panel would be required to make its own ruling on the jurisdictional matter. The parties were further informed that the Panel would wait ten days and if neither party petitioned BCB for a ruling, the Panel would make its own jurisdictional ruling.

Neither the UFA nor the City petitioned the BCB to decide the matter within the specified period of time.

4) UFA position

The UFA strenuously asserted that the Panel has no jurisdiction to consider this matter because:

- This has already been determined to be a nonmandatory bargaining subject by the BCB in its scope decision. The UFA notes that the BCB in its decision regarding what issues could be presented to the 1989 UFA Impasse Panel stated that a permissive subject affecting manning levels could not be transformed into a mandatory subject for the purposes of future negotiations and gave the City the right to delete that article from the UFA/City collective bargaining agreement. This analogy is relevant when considering the City's request to receive credit for the 1992 BCB scope decision.
- At no time in the history between the City and the UFA has the City ever given credit to the UFA for a scooped out contract provision.
- If the Panel were to consider this matter it would be usurping the BCB's jurisdiction. If this matter may be raised, it may only be raised as a practical impact before the BCB.
- It would be an improper diminishment of its statutory benefit, the 25 Group Chart, if the Panel were to recommend another benefit be reduced merely because they have opted to not voluntarily bargain away their right to a the statutory benefit.

The UFA concludes that it would be improper and unprecedented for the Panel to consider whether the City is entitled to any credit for the BCB scope decision which restored the 25 Group Chart.

5) City position

The City asserted that the prior impasse panel gave the UFA membership the option of working the longer work year (the 24 Group Chart) and receiving a substantial increase in the longevity schedule. That impasse panel foresaw and provided for the event that the matter might be held to be invalid. In that event, the increase in the longevity was to cease nunc pro tunc. When the UFA filed its scope petition in this case it did exactly what the 1989 UFA Panel recognized it might do. The BCB is a court of competent jurisdiction as referred to in the prior impasse award. Therefore, once the BCB ruled that the continuation of the contract provision would violate the administrative code, the City has the right to return the longevity schedule to its level prior to the 1989 UFA Award.

The City proposed an alternative to the elimination of the increase in the longevity schedule. It argues that the UFA must identify a means by which it can compensate the City for the loss of value resulting from the reduction in hours worked.

The funding of the City's offer is premised on UFA members continuing to work the same number of hours as worked prior to the BCB scope decision. If the City loses the value of those hours, certain funds otherwise available for the UFA settlement will now have to be used to compensate for the loss of value of the 39.6 hours and will no longer be available for the UFA settlement.

6) decision on jurisdiction

It is inappropriate for this Panel to either consider matters merely because the City has asked it do so or to refuse to consider these matters merely because the UFA objects. Because neither party has requested that BCB determine this panel's jurisdiction, we are now required to make that determination.

Issue 1 - Whether the 1989 UFA Award gives the City a right to retract longevity increases.

The Panel determines this issue to not be properly before it. The Panel has authority to determine terms and conditions of employment which are to be incorporated into the parties' 1990-91 collective bargaining agreement. The 1989 UFA Award only governs the 1987-90 time period (and the status quo period). Even if that panel gave a right to the City to reduce longevity upon the happening of a certain contingency, such right, assuming the contingency occurred, would only apply for the period covered by the prior

panel's jurisdiction. Each panel has exclusive jurisdiction for different time periods. Rights awarded by the prior panel cannot limit the authority that this Panel has for the 1990-91 contract period.

Issue 2 - Whether the Panel may consider the fact that firefighters will be working 39.6 hours less under the 1990-91] collective bargaining agreement.

This matter is properly before the Panel for the following reasons:

- The level of benefits of longevity and time off are mandatory bargaining subjects which the City has a right to place before the Panel. The Panel is required to determine the level of benefits of any mandatory bargaining subject that has been raised before it. Neither side is precluded from presenting whatever equitable arguments it feels support its case relating to what should be the level of benefits of these mandatory subjects.
- This matter is a different one than the one previously decided by the BCB. The BCB matter dealt with whether the UFA could be required to agree to a change in the work schedule (the 25 Group Chart) referred to in the administrative code. The BCB did not decide what impact the change in work schedule would have on other matters.
- The City is not attempting to circumvent the BCB decision or the applicable law. The fact that the firefighters are to be given a particular work schedule in no way precludes the City from asking the Panel to consider the fact that the firefighters will be scheduled for less hours than under the 1987-90 collective bargaining agreement. Stated another way, the City is not asking to receive in another manner that which the law precludes.
- The background of the chart change awarded supports the view that the City should be permitted to argue for consideration. The 1989 UFA Panel tied the chart change (a permissive topic) to economic considerations (mandatory topics) and gave the UFA the choice of accepting extra hours for extra compensation. If the UFA automatically reduces the additional hours they accepted in the 1989 UFA Award, the City may argue that the quid quo pro for those hours should be eliminated also.
- The Panel is mandated by the relevant statute to consider certain criteria including the overall compensation paid to firefighters. The relation between time worked and compensation paid should be considered under this criteria.

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- The UFA and the City stipulated that the applicable pattern requires the parties to generate savings to offset increases beyond budgeted funds and pension savings. In the context of this stipulation, it is reasonable to permit the City to argue that the reduction in hours should be offset by other savings.
- The 1989 UFA Panel dealt with a similar issue and gave some credit to the UFA for economic benefits (permissive subjects) removed from the parties' collective bargaining agreement as a result of a prior BCB scope decision. Thus, the precise situation that the UFA is now urging may not be referred to before this Panel was used to the UFA's advantage in the prior award.
- The UFA suggests that this situation be dealt with as a question of whether a practical impact occurred. (A matter that would go before the BCB.) That procedure applies to claims that an unduly burdensome workload or an unsafe condition was created. The City is not making either of those claims. Thus, that procedure is inapplicable in this situation.

7) retention of jurisdiction to decide the merits

We understand from the record before us that the City asked the UFA to commence bargaining on the impact of the BCB scope decision shortly after it was issued and that the UFA refused. At this time, the UFA seems to strenuously argue that the matter should be negotiated prior to any ruling on its merits. We now appear to have two parties interested in trying to resolve a difficult, emotional and complex issue. Because the parties have not previously engaged in any bargaining over this matter and because we strongly support the collective bargaining process that only resorts to third party neutrals after the parties have been unable to directly reach an agreement, we will not issue a decision on the merits at this time. Instead, we will give the parties an opportunity for face to face negotiations on this subject and will only reassert jurisdiction in order to issue a decision on the merits after being requested to do so by either party.

We appreciate that this approach of deferring on the merits only permits us to issue an interim award on the other issues before us. This also means that virtually any of these other issues covered by the interim award could be affected, when and if, a final award is issued. If this approach were to create a significant problem for either party, they merely have to ask us to proceed to issue the final award.

QUARTERMASTER SYSTEM

The City desires to eliminate the \$1,000 maintenance allowance and replace it with a quartermaster system in which the City supplies all protective gear and uniforms to every member of the Department with a \$150 per year for cleaning of uniforms. This demand is based upon the fact that OSHA mandates that the City provide safety equipment to every member of the Department at no expense to the member. The City argues that: 1) the quartermaster system would ensure that every firefighter would receive proper clothing and equipment; 2) under the quartermaster system protective gear, monitored for quality control, would be provided by the City and replaced as required; 3) damaged gear could be repaired on site and even loaner gear would be available; and 4) without a quartermaster system, the City can be held responsible if an employee fails to purchase equipment with the money the City provides.

The City maintains that part of the 1989 UFA Award provided that the UFA send a letter to the New York State Department of Labor ("DOL") stating that the \$1,000 uniform allowance was sufficient to provide protective gear. However, several months after the collective bargaining agreement was ratified, the UFA challenged the sufficiency of the allowance before the DOL. The DOL found that because the \$1,000 was to be used for both protective gear and uniforms it did not satisfy OSHA standards. The City argues that current uniform allowance does not meet the needs of the City and a responsible alternative is needed.

The City suggests an interim proposal (pending the establishment of the quartermaster system) in which the uniform allowance would be 1) moved to a separate safety section of the contract; 2) required to be used first to purchase protective gear; 3) paid without having taxes taken out; 4) paid with the proviso that employees would be required to provide receipts for the protective equipment purchased and for cleaning and maintenance; and 4) considered taxable for any amount not covered by a receipt.

The UFA objects to any change in the current uniform allowance provision. It asserts that there is no operational system and the uniform allowance has already been paid for the contract term covering July 1, 1990 through September 30, 1991. The UFA notes that the City fails to give the UFA any credit for the elimination of the allowance. This does not adhere to the pattern of giving credit for productivity concessions. If a switch is to be adopted, it must be the product of collective bargaining, not arbitration. The consideration

on both sides are too significant for the change to be done summarily. Particularly since the PBA maintains its allowance, the panel should deny the City's request to implement a quartermaster system.

STATUTORY CRITERIA

Section 12-311 (b)

An impasse panel appointed pursuant to paragraph two of this subdivision c shall be considered wherever relevant the following standards in making its recommendations for terms of settlement:

- (i) comparison of the wages, hours, fringe benefits, conditions and characteristics of employment and public employees involved in the impasse proceedings with the wages, hours, fringe benefits, conditions and characteristics of employment of other employees performing similar work and other employees generally in public or private employment in New York City or comparable communities;
- (ii) the overall compensation paid to the employees involved in the impasse proceeding, including direct wage compensation, overtime and premium pay, vacation, holidays and other excused time, insurance, pensions, medical and hospitalization benefits, food and apparel furnished, and other benefits received;
- (iii) changes in the average consumer prices for goods and services, commonly known as the cost of living;
- (iv) the interest and welfare of the public;
- (v) such other factors as are normally and customarily considered in the determination of wages, hours, fringe benefits, and other working conditions in collective bargaining or in impasse panel proceedings.

DISCUSSION

The economic package sought by the UFA represents approximately a 5% cost. As previously noted the City has no objection to this economic package so long as it is fully funded through budgeted funds, the savings from the change in interest rate assumption, and UFA offsets. The UFA stipulated that offsets should be found to cover the funding beyond that covered by the budgeted funds and the interest rate assumption. Therefore, we shall provide the basic package sought by the UFA and specify the funding of that package consistent with the parties' stipulation.

For a number of reasons, we find this economic package of approximately 5% to be a fair and reasonable package for the contract period July 1, 1990 through September 30, 1991. First, with the economic package herein awarded, the firefighters will continue to be among the very highest paid firefighters in the country. Second, the City's precarious fiscal position is duly taken into consideration by the partial funding of the package with appropriate offsets. Third, the economic package is consistent with the economic package received by all other unionized city employees. Fourth and most importantly, this award will maintain the parity relationship between the police officers and firefighters. A fundamental principle underlying this interim award is our endorsement of the parties' acceptance of a parity relationship between police officers and firefighters. We note for the record that the City advanced this principle before the PBA Arbitration Panel in case 1-203-91 which determined the terms and conditions of the PBA/City collective bargaining agreement for the term July 1, 1990 through September 30, 1991 and established a pattern for this case.

The funding of the economic package is to come from three sources: budgeted funds, interest rate assumption change, and offsets. As previously noted, the budgeted funds represent 3.02%. The interest rate assumption change generated .85% and thus the remaining 1.17% will be funded by offsets.

The City and the UFA agreed that the savings from the reduction of the interest rate assumption would be available to partially assist fund the economic package. The UFA argues that it is entitled to credit for an interest rate assumption change from 8% to 8 1/4%. We are not persuaded by the UFA's arguments.

A change in the City's pension contribution, previously based upon an interest rate assumption of 8 1/4%, was made because the interest rate assumption was increased to 8 1/2%. That change resulted in the City having to contribute less monies to the pension plan.

The previously cited letter from the City to the UFA assured the UFA that it would receive collective bargaining credit for the savings generated by the increase in interest rate assumption. The letter to the UFA does not state or suggest that any additional consideration is due the UFA. The discussions that led to the letter did not cover more than the actual saving generated. Our interpretation is consistent with the arrangements between the City and other city unions (based upon similar agreements either written or oral). The conclusion is that the UFA and the City agreed that the monies available for funding the contract is that sum which equals the difference from the contribution the year before the change (based upon a 8 1/4% rate) and the monies represented by the contributions after the change (based upon a 8 1/2% rate).

The UFA also argues that it should get credit for a change in the actuarial valuation method. This change represents one of various incidental ongoing changes in the pension fund methods. Some changes increase the costs while others decrease the costs. This matter is totally outside the scope of the letter which related pension matters to collective bargaining costs. In addition, the change in actuarial valuation method applied to all other city pension funds and none of the other unions have received any credit for the change. Therefore, we do find any monies available for collective bargaining funding as a result of this change.

We now turned to the specific offsets which we will make to ensure proper funding of the economic package. Consideration is given to minimizing the impact on new hires and avoiding non-mandatory bargaining subjects. The offset total (1.17%) added to the budgeted funds (3.02%) and the change in interest rate assumption (.85%) equals 5.04%

which is the cost of the benefits requested by the UFA. The following offsets are appropriate to properly fund the economic package covered by this interim award:

1. elimination of time off for blood donations .05%
2. annual leave reduction for firefighters hired after 12/31/92: .46%
3. elimination of the personal leave day .32%
4. reduction of lump sum annuity to \$500 .085%

While there are other suggestions before us to achieve the required savings, only by reducing this item, which is a one time lump sum, will the impact be felt for only one year. Conversely, we find it would be inadvisable to permanently reduce a continuing benefit to cover the cost of a lump sum payment.

5. fire salvage credit (assuming all Ladder Companies are in the program) .255%
of the figures used in the granting of benefits and setting the offsets, this is the only one that was not stipulated by the parties. We have had a number of costs suggested to us for this item. Given the context of this case, .255% seems a fair estimate of the value.

Quartermaster System

The parties stipulated that firefighting is a dangerous profession. Firefighters require uniforms and protective equipment in order to properly and safely perform their duties. Furthermore, the City is required by law to provide equipment to firefighters at no cost.

While the City seeks the right to implement a full quartermaster system, it presented an interim proposal designed to continue the \$ 1,000 allowance while assuring that the money is used to purchase and maintain protective equipment. The UFA contends that any change in the system must be negotiated and should not be the product of an impasse panel award.

The Panel is persuaded that the current \$ 1,000 uniform allowance fails to meet either the needs of the City to provide protective gear and uniforms or the needs of firefighters to be safeguarded in the performance of their duties. Moreover, the current uniform allowance has been found by the Department of Labor to violate OSHA standards which require the City to provide proper protective equipment to firefighters at no cost. The present system is inadequate. But, this Panel is dealing with a short-term contract which is to expire on September 30, 1991. This is simply an inappropriate time to consider a complete change to the quartermaster system. The Panel finds that the City should be allowed to implement the following procedure in order to meet the needs of firefighters to have protective equipment and the City's obligation to be in compliance with OSHA standards. First, the uniform allowance shall be moved to a separate safety section of the contract to acknowledge that it is a safety issue. Firefighters shall be required by contract to use the allowance first to purchase and maintain protective gear. Upon the submission of receipts, the portion of the allowance spent for either purchase or maintenance shall not be considered taxable income. Finally, any substantially new or different equipment which firefighters are required to purchase, beyond what is currently required, must be bargained between the parties.

Therefore, and in accordance with the above discussion, it is our

INTERIM AWARD

THAT,

1. The Panel does not have jurisdiction to decide whether the 1989 UFA Award gives the City the right to retract longevity increases.
2. The Panel does have jurisdiction to consider the impact of firefighters working 39.6 hours per year less.
3. In order to give the parties an opportunity to discuss this matter, this interim award does not deal with the merits of the impact of the reduction in hours. The Panel retains jurisdiction over this matter and will, upon the request of either the UFA or the City, do whatever it deems is necessary to issue a final award.

4. The contract term covered by this interim award shall be July 1, 1990 - September 30, 1991.
5. A wage increase of 3 1/2% be granted effective July 1, 1990.
6. A wage increase of 1% (compounded) be granted effective July 1, 1991.
7. The Welfare Fund contribution be increased by \$ 100 effective July 1, 1990.
8. A \$500 lump sum contribution be made into the annuity fund.
9. The Civil Legal Representation Fund contribution be increased by \$25 effective July 1, 1990.
10. The uniform allowance shall be moved to a separate safety section of the contract to acknowledge that it is a safety issue. Firefighters shall be required by contract to use the allowance first to purchase and maintain protective gear. Pursuant to its proposal, the City may require the submission of receipts for the purchase and maintenance of protective gear and uniforms.
11. Time off for blood donations shall be eliminated effective 4/1/93.
12. Annual Leave reduction for firefighters hired after 12/31/92 in accordance with the following:

1st year - 81 hours	(49 hour tours - 3 15 hour tours)
2nd year - 81 hours	(49 hour tours - 3 15 hour tours)
3rd year - 48 hours	(29 hour tours - 2 15 hour tours)
4th year - 48 hours	(29 hour tours - 2 15 hour tours)
5th year - 33 hours	(29 hour tours - 1 15 hour tour)
13. The personal leave day shall be eliminated effective 7/1/93, including the personal leave day accrued during Fiscal Year 1993i (7/1/92 - 6/30/93).
14. The City shall be permitted to make the change it proposed in regard to salvage.

15. No other changes are directed by the Panel and thus we order a continuation of status quo as to all other matters.

Dated: March 10, 1993