

Section 209.4 of the New York Civil Service Law, Public Employment Relations Board Chairman Harold R. Newman on June 13, 1979, designated as a public arbitration panel to make a just and reasonable disposition of the within dispute, the following:

John W. Whittlesey, Chairman
Terence M. O'Neill, Employer Member
Celestine Kelly, Employee Member

The dispute herein between the parties arose as a result of a petition by the Firefighters of April 23, 1979 to the Public Employment Relations Board for such appointment; responded to by the District May 9, 1979. The dispute involves the terms and conditions of a new agreement between the parties to replace that two (2) year contract between them which expired December 31, 1978, which agreement was itself the result of compulsory interest arbitration occurring in 1978 completed, according to the District's brief, May 1, 1978. This award was not furnished the Panel. At the expiration of the 1977-1978 contract, a substantial number of matters remained unresolved despite negotiating meetings on September 6 and 27; October 25; November 16; and December 6; 21; and 27 of 1978. Further meetings were held January

11, 22 and 31, 1979, which did not resolve the matter. Mediation was requested, and took place February 14 and March 13, 1979 without attainment of an agreement. The impasse was then referred to arbitration to the above-named Panel.

The Panel held arbitration meetings at the District Fire House Station, 19 Rosemont Boulevard, White Plains, New York on September 6 and October 3, 10 and 25, 1979. Briefs were filed by each party, postmarked December 6, 1979. At the hearings, both sides were allowed full opportunity to present facts and argument orally and through written exhibits, and to cross-examine each other's witnesses. A number of rulings were made by the Chairman during the course of the hearing with respect to admissibility of evidence; all of them are affirmed herewith.

Mr. Corwin was the spokesman for the District; Mr. Flynn for the Union. Executive sessions of the Panel were held December 11, 1979, January 10, 1980 and March 6, 1980 which fully explored the matters in dispute. It was recognized that, of the original demands by each party, a number had been either resolved by the parties,

or were eliminated from mandatory negotiating requirements as the result of a Public Employment Relations Board ruling (Joint Exhibit No. 4) on September 11, 1979 upholding seven (7) of the eight (8) improper practice charges made by the District against the Union, thus removing those matters from the scope of this arbitration. These items are, accordingly, not included in this award since they have already been resolved. The remaining items in dispute are dealt with below.

The Fairview Fire District comprises 5.5 square miles within the Town of Greenburgh in Westchester County, New York and provides fire protection to some seventeen thousand (17,000) people, together with other services, primarily of an emergency nature. The elected five (5) member Board of Fire Commissioners administers the fire district, sets its policies and makes its regulations, which are executed by the Department Chief, a position currently held by Mr. Robert A. Mauro. It operates two (2) fire stations with three (3) engines, a combination ladder and engine, and a rescue vehicle. The Association represents eight (8) Lieutenants and thirty one (31)

firefighters, who are supplemented by what the Association calls a "marginal volunteer force". The assessed valuation of properties in the District is \$82,076,795 (Association Exhibit No. 4). The District had no outstanding debt as of January 1, 1979 (Association Exhibit No. 1). The tax rate for 1979 (Association Exhibit No. 4) was \$18.50. The District's 1978 budget was \$1,300,246, with actual expenses at \$1,299,874.86, of which latter figure some \$844,038.11 were for personnel, and \$28,160.90 for an equipment reserve (Association Exhibit No. 1).

The matters in issue before the Panel are twenty two (22) of the Union proposals (reduced from its original list of forty six (46) (Joint Exhibit No. 2), and twenty three (23) District proposals (Joint Exhibit No. 3). Some of these apparently separate matters can and will be considered jointly. We now turn to those matters.

1. Union Security (Item No. 2)

The Union here demands that Article 7 of the 1977-1978 contract be amended to include provision for a so-called agency shop dues deduction, not now provided by the agreement, for firefighters not members of the

union. The stated basis is that the demand costs the District nothing and will not affect the operation. It is also stated that such an arrangement is allowed by recent state law and that it will enhance the union's bargaining position and its relations with its members. The District states that employees should have the right to determine whether or not they will belong to a union and pay dues. Also, the union states, the District alleges no need for the change since all employees are now union members, and the contract contains an acceptable dues checkoff provision. It also states that no other District has agency shop provisions.

The issue here is primarily a philosophic rather than a practical one. There does not appear to be any difficulty at this point in the union having all Fairview firefighters join its ranks as members, nor did any such concerns emerge at the hearing. The matter is not one which requires an award in favor of the union. This demand is, accordingly, dismissed.

It should here be noted that the parties have agreed to delete Article 7, Section 6 (E) of the previous contract.

2. Scheduled Reporting Time (Union Demand No. 6,
District Demand No. 11)

This demand was, on the part of the District, one to change Article 18 to require uniformed personnel to report ready for duty ten (10) minutes prior to their shift. The union stated that it agreed with this provision, provided employees be compensated for such time. The District whereupon withdrew its demand (page No. 30 of its brief).

This matter, under the above-cited circumstances, is not before the Panel and is herewith dismissed.

3. Medical and Dental Insurance (Union Demand Nos. 7
and 8, District Demand Nos. 15 and 16)

The union here demands that Article 23 (Medical Insurance) and Article 24 (Dental Insurance) should be amended so that in the event of any rate increases during a contract year by the relevant insurance carrier, the District will absorb the costs of such increases. The District wishes to change the cited sections of the contract to require employees to pick up all costs of such insurance rate increases, not merely that portion of the increased costs which apply in the year in which the increase is placed in effect.

The present agreement requires employees to absorb such increased costs until December 31 of the year in which they occur. Thereafter, the District once again assumes full payment of the costs of both medical and dental insurance.

It is clear that the basic intent of the agreement was that the District should pay such insurance costs. There should be no longer any deviation in that requirement as is permitted in the 1977-1978 agreement. The alleged inability of the District to anticipate such increases in its budget is more illusory than real. The District estimates the costs at approximately four thousand dollars (\$4,000.00) which does not appear excessive. Other Districts pay all such costs, as the testimony at the hearing showed. The union demand herein is granted, and Articles 23 and 24 of the contract shall reflect a requirement on the District to pay all premium costs of such insurance.

Union Demand No. 7 seeks to place in the agreement an option for an employee to enroll in a Health Maintenance Organization at District expense if he chooses to do so. The District opposes this demand as leading

to potentially vast additional expense. This matter, widely required of employers in the private section under federal law, was incompletely addressed in the hearings. It did not appear from the testimony that there would be any significant added expense for such option. However, in view of the indecisive nature of the evidence, this demand is returned to the parties and shall not come back to the panel.

4. Longevity (Union Demand No. 9, District Demand No. 18)

The union demands an increase in longevity pay in Article 26 to one hundred dollars (\$100.00) after five (5) years, two hundred dollars (\$200.00) after ten (10) years, four hundred dollars (\$400.00) after fifteen (15) years, and eight hundred dollars (\$800.00) after twenty five (25) and one thousand dollars (\$1,000.00) after thirty (30) years.

The District estimates the demand will cost another three thousand dollars (\$3,000.00) per year, or more if there is no employee turnover. It states that comparable districts (Hartsdale and Greenville) do not provide it. The union states that the provision has been in effect since 1968 and that three (3) area fire

departments (Association Exhibit No. 11) pay longevity after five (5) years. .

The grant of the union demand, of course, will effectively provide many of the firefighters with an additional one hundred dollars (\$100.00) per year compensation increase over and above the increase in base rates awarded below. The purpose of longevity pay, of course, is to compensate a long-service employee and provide an inducement to remain with the employer. At this point, five (5) years does not appear to be a period of time that fits that nomenclature. Accordingly, the union demand is granted only to the extent of changing the present Article 26 to furnish such eight hundred dollars (\$800.00) longevity pay after twenty (20) years service. The balance of this provision will remain the same.

5. Overtime (Union Demand No. 10, District Demand Nos. 13, 14 and 21)

The union demands that Article 29 be amended to provide time and one half (1 1/2) pay for all "regular, callout and holdover" overtime worked by employees. Article 29 currently provides pay at straight time for

such work on the basis of an hourly rate computed by dividing the annual rate by two thousand eighty (2,080) hours. The District opposes that demand and itself urges that Section 3, Article 21 be deleted; it now provides for release of an employee when the emergency which led to his overtime is terminated. It also demands that Article 22, Section A be amended to require pay for holdover time based on actual work, and for a method of payment thereof.

The District (Association Exhibit No. 5) states that the cost of this demand is ten thousand dollars (\$10,000.00) per year. It shows a fourteen thousand five hundred thirty six (\$14,536.00) overtime payroll for 1978 and one of sixteen thousand five hundred thirty three (\$16,533.00) for 1979 to date. It states that the nature of fire service is such that regular nine to five hours simply do not exist and that emergency overtime is part of the job which should not require extra compensation, where some paid time for firefighters does not embrace such actual firefighting work. The District alleges the union has not proven its case.

The union states that Association Exhibit No. 12 and 12-A show seventy two percent (72%) of "municipal jurisdictions" pay at least time and one half (1 1/2) for hours over forty (40). It states that Greenville, Hartsdale, and Eastchester all pay cash (as does Fairview) for overtime in certain limits, and that Harrison gives compensatory time off at a time and one half (1 1/2) rate. It states that the additional cost in 1978 would have been seven thousand two hundred sixty nine dollars (\$7,269.00), an amount it does not regard as excessive.

The union agrees with District Demand No. 21 that the first section of Article 29, stating that "overtime shall be paid" in the event a need occurs should be deleted. It is, accordingly, so awarded.

In respect to the payment of time and one half (1 1/2) for overtime, it would appear to be the general practice (see Association Exhibit Nos. 2, 3 and 6 for example) to pay time and one half (1 1/2) for hours worked on callout or holdover time outside regular scheduled tours of duty only if such callout or holdover is for assignment to actual fighting of fires and not

otherwise. Callout and holdover for filling of vacancies due to absences, vacations, and the like, where an actual fire alarm call is not involved are paid only at straight time, and properly so. It is accordingly awarded that time and one half (1 1/2) shall be paid after January 1, 1980 by the District to a firefighter called out or held over outside of his regularly scheduled tour where the purpose and the result is to use him in actually fighting a fire or fires, such time to be computed from the time the firefighter responds to the alarm until the firefighter is returned to the firehouse. All other overtime work shall continue to be paid at straight time, as provided in Article 29.

As to District Demand Nos. 13 and 14, the District asserts it does not wish to alter the callout guarantee of four (4) hours set forth in Article 21, but merely to use an employee called out for an emergency on other work rather than pay him for idle time. It thus wishes to delete Section B of Article 21. It also wishes similarly to amend Article 22, holdover time, to allow for payment for such hours only if actually worked. It does not believe, for example, that it should pay one and one-half

(1 1/2) hours pay for sixty one (61) minutes worked as the current agreement provides.

The union opposes the demand, states that no hardship is imposed on the District by current provisions and regards the pay for any unworked time as merely compensation for the inconvenience of out-of-schedule work.

Especially in the light of the first portion of this section of the award is the granting of the District demand appropriate. In general, the current provisions of Article Nos. 21 and 22 provide an unearned increment to employee compensation which should not continue to limit the District. If it wishes to assign an employee called out for an emergency to other work at its conclusion, it should have the option of doing so where it is paying for the use of the employee's services during that time. The request to delete Section B of Article 21 is granted. As to Article 22, the District demand is granted to the extent that hold-over overtime is to be computed in fifteen (15) minute blocks, such that five (5) to fifteen (15) minutes work would get fifteen (15) minutes pay; fifteen (15) to

thirty (30) minutes would receive thirty (30) minutes pay; and so on. Diminution of the computation below such a period would not appear to be practical in the administration of such overtime payments.

6. Annual Leave (Union Demand No. 11,
District Demand Nos. 23 and 23A)

The union here demands that Article 32 be amended so that employees may convert annual leave to sick, emergency or bereavement leave if satisfactory proof of such need is given; and establishing a new annual leave schedule. The District wishes to have vacations scheduled by the Chief, and to furnish vacation entitlement on the basis of hours, not days. It would also delete Section E.1. of Article 32 which now places a cap of one hundred four (104) hours on an employee's Kelly days.

Both parties have agreed to delete Section E.3 of Article 32 as involving a non-mandatory subject of bargaining.

The union states that the vacation entitlement should be enlarged because Fairview firefighters receive less than those in comparable communities. It opposes the District's position in all respects and states that

firefighters actually work more days per year than the private sector.

The District wishes more control over vacations. It states that the conversion sought by the union does not appear in other relevant fire district contracts; and that no need exists for additional days off. It also wishes the annual leave entitlement to be based on hours, not working days as at present to avoid the "discrepancy that could occur where vacation is selected to coincide with night tours so that the days covered by vacation are fourteen (14) hours, not ten (10) hour days. It wishes to eliminate Section E.1. because it "grants Kelly days during vacations," not on the difference between hours actually worked and two thousand eighty (2,080) hours required by law.

In sorting out all of the above, it is clear that no showing of necessity for increasing or decreasing present vacation entitlements has been furnished. Accordingly, the union demand to increase vacation entitlement, and the District demand to change the days to hours are both denied, the one as excessive, the other as potentially unfair and very difficult to administer. The union demand

to convert annual leave into other forms of leave does not appear to be in accord with relevant practice in other districts and could result in potential abuse and unnecessarily higher costs; and is denied.

Union Demand No. 28 was stated (Joint Exhibit No. 2) to be that vacation rights of supervisory personnel should not prevail on vacation rights of firefighters and vice versa. The District originally resisted this demand on the ground that it was not a mandatory subject of negotiations. Subsequent to the hearing and between the first and second executive sessions, the Public Employment Relations Board ruled that the demand was a mandatory subject of bargaining and, consequently, the panel now has the authority to rule on it.

The union claims that Lieutenants and firefighters pick vacations from separate lists at the present time and should continue to do so. The District regards the demand as leading to a situation where three (3) individuals can be on vacation at the same time. This, the District says, leads to inefficiency, excessive overtime and, in addition, is contrary to past practice.

The District demand that the Chief be allowed to establish vacation schedules is granted to the extent that the Chief may approve such schedules, as selected by the employees, may alter them where appropriate in the operation of the Department, provided that he does not act unreasonably in so doing. The last sentence of Section C of Article 32, which now permits two (2) men to pick their vacation periods at any one time is to be altered to restore past practice prior to the 1977-1978 contract where one firefighter and one lieutenant could be off on vacation at any one time. The past practice is appropriate. Continuance of the present practice of allowing two (2) firefighters and one (1) lieutenant at any one time, appears to have proven a costly and chaotic situation for the District, leading to considerable extra overtime. Union Demand No. 28 is denied, as set forth above.

7. Emergency Leave (Union Demand No. 12)

The union demands that Article 33 be amended to define emergency leave as "any unfavorable condition that may arise requiring an employee to absent himself" and to require that it be granted with pay for up to

forty eight (48) hours. The District fully opposes and wishes to retain current contractual requirements.

The union has shown no reason for such a broad change. There does not seem to have been any problem with the present provisions. The granting of the demand would severely hamper the operation of the District and could well curtail its ability to respond to the emergencies for which it was created to cope.

This demand is denied.

8. Holidays (Union Demand No. 13, District Demand No. 24)

The union demands one (1) additional holiday, specifying Election Day, but in any case seeking a total of eleven (11) holidays under Article 35. The District opposes the demand, on the ground that it would cost between five thousand dollars (\$5,000.00) and six thousand dollars (\$6,000.00) annually. The union counters that other relevant fire districts have eleven (11) or twelve (12) holidays and that such figures are prevalent statewide (Association Exhibit Nos. 5, 12, 12A).

The union showing as to prevailing practices is convincing. Conceding that this is a money item, the same is true of other districts, and Fairview is clearly

behind in this area. The demand for one (1) additional holiday, Election Day, is granted.

Section E of Article 35 is superfluous, covered by state law and shall be deleted, as demanded by the District.

9. Sick Leave (Union Demand No. 14)

The union seeks to change Article 36 to require that certification of illness as required by the District should be at the expense of the District. It would also make the granting of sick leave mandatory on production of such certificate subject to certain procedures. The District opposes, and states that grant of sick leave has not been a problem in the past, nor have requests been unreasonably denied. It cites Hartsdale and Greenville practice as having no such sick leave provision in their contracts. It also states that a grant of the union demand as set forth would "circumvent" Section No. 207A of Municipal Law which requires fire fighters to perform light duty when medically certified as qualified therefor. This provision, the District says, saved it one hundred thousand dollars (\$100,000.00) per year in 1978-1979.

The union counters that the practice is "arbitrary" and expensive to employees. However, the District makes a persuasive case for retention of the present provisions. There was no evidence that this application has created a problem, and there appears to be little potential for one, despite the union fears, based on experience to date.

10. Union Activities (Union Demand No. 15)

The union demand is for sixteen (16) days paid time off per year for union business, under Article 37. The District opposes, citing the present provisions which grant up to twelve (12) days off at the expense of the employee, not the District, and stating that the costs of such demand will run two thousand dollars (\$2,000.00) to two thousand five hundred dollars (\$2,500.00) per year. It also cites other provisions for time off and states that no hardship is thereby imposed on the union under present contract provisions. The union states that other Districts allow time off, citing Greenville at nine (9) days; Hartsdale at thirteen (13) days; Harrison, Eastchester and the Greenburgh police having unlimited days off.

The fact that there are now twelve (12) days allowable in the current provisions of Article 37 did not

appear, in the testimony, to represent a limitation on union activity in the District, or prevent adequate representation of the bargaining unit. Indeed, provision is made in Article 37 D for the conduct of union business on duty where it pertains to matters arising under the contract. The demand is essentially for additional paid time off to attend union conventions, educational services or the like, which is only in part relevant to union business. This demand is granted only to the extent of allowing additional paid leave of no more than six (6) days in total in any calendar year to attend union conventions. Any further paid leave for such purposes is to be at the discretion of the District.

11. Welfare Fund (Union Demand No. 16, District Demand No. 27)

The union demands that Article 39 of the agreement be expanded to include a two hundred dollars (\$200.00) supplemental allowance per employee to be applied by the union to the workers' medical and dental expenses over and above insurance provisions. The District demands that this provision be deleted, and states no other district has comparable provisions.

Article 39 now requires the District to provide an accidental death and weekly indemnity policy for all employees. The District had previously done so, but after such undertaking, the insurance company cancelled the policy. A subsequent arbitration award (Association Exhibit No. 22) held that the District had fulfilled its obligation under Article 39 and had no liability to the employees "in any case where the insurance company denies coverage."

This situation represents a problem created by neither party, but by action of a particular insurance company cancelling the coverage. Neither the union demand to pay two hundred dollars (\$200.00) per employee nor the District demand to delete the provision represent an appropriate solution. These matters have simply not been fully explored by either party. Nevertheless, insurance coverage in this area is desirable, and it is awarded that the District shall provide at its expense death and disability coverage comparable to the coverage provided the volunteer force, and shall not reduce such coverage during the contract term.

12. Uniforms (Union Demand No. 19)

The union demands the amendment of Article 42 to provide a one hundred dollars (\$100.00) uniform maintenance allowance per employee per year. It states that its concession to delete certain requirements of current Article 42 (dress blue shirt and annual issuance of work pants, and two (2) work shirts) shows it seeks a fair allowance. The District opposes as involving substantial cost (four thousand dollars (\$4,000.00) per year), and as a change in longstanding past practice which has not been shown inappropriate or inadequate.

There is no showing of any necessity for such a change in past practice, or that a maintenance allowance is necessary for proper dress of the employees. This demand is denied.

13. Repairs and Maintenance (Union Demand No. 20, District Demand No. 33)

The union demands that Article 43 be amended to eliminate from the required duties of employees such functions as painting, carpentry, electrical wiring, roofing, plumbing, masonry work, "heavy" landscaping, heating and "any other work that may be classed as a

skilled tradesman's profession." The District demands the deletion of the term "except major repairs" from Article 43, thus requiring the firemen to perform "all repairs and maintenance" on apparatus and premises. The union states they wish to know what may be expected of its members on duty, and to cut down the variety of tasks requiring "specialized knowledge". It wishes to have them perform only the "relevant work of firefighters."

The District states that this matter was (District Exhibit No. 24) the subject of an arbitration award in 1979 allowing the District to require painting the firehouse as not constituting a major repair. This leaves some ambiguity, it is said, which requires the deletion of the phrase "except major repairs". The District opposes the relief of repair and maintenance duties from the firefighters, stating that requiring outside contractors will be expensive; that the District does not require the employees to perform beyond their qualifications; and that the work is in keeping with their job and a useful way to absorb employee paid time.

There appears to have been no real difficulty in applying Article 43 in the past, from the testimony.

The District is entitled to use employees at work they are qualified to do in repair and maintenance of the apparatus and premises, and should not be forced to contract out such work while employees are available on paid time. The arbitration award which concerns the union is limited to the painting issue before the arbitrator in that case. The union demand is denied.

So also is the District demand. The performance of major repairs would in most cases be beyond the qualifications of the employees and should be done by others. The term major repairs is intended to encompass operations for which permits are required to undertake, and other cases where the skills or equipment to do the job are not reasonably available to the District without resort to outside contractors. The language shall be added to the contract.

14. Grievance Procedure (District Demand No. 20)

The District seeks to revise Article 44 to:

a) delete from Subsection A, definition of a grievance, a complaint regarding the "rules and regulations of the Fire District; b) lower the time limit for filing grievances

from one hundred twenty (120) to twenty (20) days; and
c) making the arbitration procedure of Step 3, Section
B advisory to the District.

The union opposes these demands.

Demand (a) is too broad and, if granted, would eliminate all rules of the District from the grievance procedure, even though they directly relate to or even conflict with the provisions of the contract. The grievance procedure normally should be used for protesting alleged contract violations, it is true; but rules of the District that relate to terms and conditions of employment would clearly be embraced within that concept. The provisions sought to be deleted does not appear to have created any substantial administrative problem over the years in which the rules have been subject to the grievance procedure.

The demand is granted, therefore, only to the extent that District rules or regulations not related to terms and conditions of employment or not issued under the reservation of right by the Board in Article 12, and 17 are to be exempt from the requirements of Article 44. This shall be added to the contract.

(b) The demand to reduce the time limit for filing grievances to twenty (20) days from the date of occurrence is likewise too sweeping, where the contract requires every effort to adjust the grievance in several ways prior to formal filing. Here again, no evidence that a problem has been created by the present time limit has been vouchsafed. Nevertheless, one hundred twenty (120) days is a lengthy time to allow grievances to await formal entry under Article 44, and the potential for delay in settlement or resolution of complaints is enhanced by such a period. The demand is granted to the extent that the time limit for filing under Step No. 1 is reduced to sixty (60) days.

(c) The District demand for advisory arbitration is, as the union states, wholly without merit, and could delay or force into litigation grievances that could far more readily be disposed of under the present system of grievance arbitration. This portion of the demand is denied.

15. Personal Days (Union Demand No. 22)

The union seeks a new contract clause granting two (2) personal leave days for each employee, on the

ground that such days are acceptable practice in other areas, and to ensure that non-emergency time off for certain personal obligations is assured. The District opposes, on the grounds that it would cost nine thousand dollars (\$9,000.00) to ten thousand dollars (\$10,000.00) per year; that the employees have a considerable amount of other days available under their work schedules, together with sick leave, bereavement leave and emergency leave. Hartsdale and Greenville, the District says, have no such allowance. The union says the District bases their position on the ability of firefighters to swap days off.

The evidence showed that Chief Mauro did from time to time and at his discretion grant such personal days off. There is, likewise, substantial provision in the agreement already to give firefighters the necessary leeway to attend to the matters for which the new provision would provide. There does not appear to be any comparable provision in the two (2) closely-related fire districts. This demand is thus denied.

16. Out of Title (Union Demand No. 23)

The union demands that an employee working in a higher grade receive pay for the period of such work at the rate for the higher grade. It adds that this would protect both firemen and the District by enforcing the proper organization of its firefighting complement. It states that the present rules are "not always strictly adhered to."

The District opposes, stating that only when the department orders a firefighter to act in a Lieutenant's (or higher) capacity should such pay be required. It seeks continuation of the present policy, and adds that it would place a substantial administrative burden on the District to calculate pay changes for short periods of time. It also states that the cost would be substantial. It adds that Hartsdale has no provision for such pay at all, and Greenville does for an entire three (3) day tour.

Clearly, any substantial assignment of firefighters to perform the full content of higher-rated work should carry with it the obligation to pay the

higher rate of pay. The general distinction, as the testimony showed, between Lieutenant (or other grades) and firefighter is the degree of responsibility afforded, however. Otherwise, there are many functions that overlap those grades. In order to recognize both principles, therefore, the award shall be that an assignment by the Chief of a firefighter to Lieutenant or higher capacity within the bargaining unit (or such other assignment) where it covers a three (3) day tour of duty shall be in writing and paid at the job rate. If no such assignment is made, of course, the firefighter is not obligated to assume any such responsibility except for a very limited period of hours, consistent with his fireman's obligations generally. Nor may the fire district avoid the obligation set forth herein by withholding written assignment while expecting performance of higher rated work.

17. Open Personnel Files (Union Demand No. 24)

The union demands access to personnel files by each firefighter under a new procedure described in its brief. The District states that an employee's personnel file is now open to him; that nothing is placed

in the file without reviewing the insertion; and he is allowed to place material in his file if desired.

The union demand is broad, and could pose administrative problems. The present practice of the District has worked well; indeed, few employees have been concerned enough about the contents of their files to ask to see them. It hardly seems necessary to place such an obligation in the contract, where the parties are essentially in agreement as to the procedure and entitlements of the employees now. It is awarded that an employee be permitted to review his file on reasonable notice not more than twice a year on his request, to insert material in that file where he deems it necessary to correct or explain any material therein, and that no material be placed in the file of any employee that has not been shown to him.

18. Severability (Union Demand No. 26)

The union demands language in the contract stating that if any section, etc., of the agreement is judicially declared invalid or unconstitutional, this shall not affect the validity of the remainder of the

contract. The District took no position on this demand. It is a reasonable request, found in many agreements in both public and private sector, and, accordingly, is granted.

19. Vacation Rights (District Demand No. 3)

The District demand is for the deletion of current Article 32, Section E(1) from the new agreement on the ground that the total hours for "Kelly" days should be based on the differences between the hours actually worked and the 2080 hours required (annually) by law. The Association regards the District position as one "obstinately to reduce the number of hours from 104 to 96). It states that the current number is essentially time off, previously negotiated for and states that no economic need to grant this demand has been shown, nor has it been shown to be practiced in any comparable fire departments. It alleges that if the demand were granted any arbitrary number of hours could be chosen.

"Kelly" days essentially involve accrued time off owed to employees because they are required by scheduling necessities to work a forty two (42) hour

work week as opposed to that required by statute, which is actually forty (40) hours. The difference of two (2) hours per week is time owed to the employees by reason of having been "overworked". The one hundred four (104) is the quotient of two (2) hours per week times fifty two (52) weeks per year.

If the panel were to grant the District demand, it is clear that it would not accomplish what the District desires. The mere deletion of Article 32, Section E(1) would have the sole effect of removing the current cap on "Kelly" days available to employees and would not reduce the number allowable. Moreover, the District statement that hours should be reduced to ninety six (96) assumes a four (4) week vacation annually, which is not applicable to all the firefighters. There has been shown no evidentiary support for the District demand in this respect. The situation is complicated by the fact that all request for time off under Section E(4) of Article 32 must be for a full ten (10) hour or full fourteen (14) hour tour and the number of combinations are limited in this respect. Reduction of total time

off from one hundred four (104) to ninety six (96) hours will aggregate less than one (1) tour reduction.

Accordingly, the District demand for the elimination of Subsection E(1) is denied as not responsive to the problem. Subsection E(1) is amended to reduce the number one hundred four (104) to one hundred (100) as the cap on the total time off to be available for each employee under this article.

20. Payroll Deductions (Union Demand No. 29)

The union demands that payroll deductions for deposits to a banking institution or credit union should be made available to employees. The District states that the mechanics of this demand are not specified and that it presents a severe administrative burden which should be and in the past has been readily assumed by the employees.

There appears to be no specification of how this demand would work if implemented. Nevertheless, the mechanics can be easily worked out. The demand is granted.

21. Public Employees (District Demand No. 2)

The District demands that the last sentence of Article 2 be deleted as unnecessary. It requires the District to be guided by laws of the District and is clearly superfluous. It would appear to create a duplicate contract right of a needless character. The demand to delete is, accordingly, granted.

22. Recognition (District Demand No. 3)

This demand seeks to change Article 3, recognition clause, to make it clear that the union bargains for and represents only firemanic employees up to and including the rank of Captain and excluding all others. It states that, as written, it could include the District Secretary-Treasurer who is not within the intended scope of the bargaining unit. The union opposes as unsupported and beyond the power of the Panel of Arbitrators.

The contract clause as it stands is vague, and does present the possibility of including within the unit employees of the District not contemplated in the original structuring of the unit. The change suggested by the District is granted as appropriate as a clarifying

measure insofar as it wishes to exclude the Secretary-Treasurer of the District from the unit, and will in no way endanger the current scope of the unit nor exclude any firefighters or include others whom neither party would want within the unit description. The Arbitration Panel, of course, has the power to change any portion of the contract submitted to it for disposition. The District demand is granted.

23. Conditions of Work (District Demand No. 4)

The District demands that Article 4 be deleted from the contract as "unnecessary verbiage", and on the ground that the phrasing is not clear and meaningful. The union opposes the demand as unsupportable.

The clause is plainly unclear. Yet the union has a point in fearing that its removal could lead to misconceptions of the District's intentions, even though the District plainly does not wish to erase it forever. Nevertheless, the provision has caused no problem; the demand needs further discussion, and is accordingly denied.

24. Commencement of Negotiations (District Demand No. 7)

The District demands that Article 9 be changed to require submission of demands for bargaining on or before June 30 of the last year of the current contract. It states the date is unrealistic and out of keeping with past practice. The union agrees that it acceded to this demand in the negotiations preceding this arbitration, but states now that the demand is unsupported.

The April 30 date is unrealistic, and appears to have been waived in the past. Moving the date to June 30 should actually benefit the union by allowing them more time to present their demands and to tailor them to the current situation. The demand is granted.

25. Correspondence (District Demand 7A)

The District demands the deletion of Article 11 Section C specifying the times of Board and union meetings. The union does not seriously oppose the demand and, indeed, it is to the benefit of both parties to eliminate from a bargaining contract requirements of either party for meetings times which are essentially the internal concern of each. The demand is granted.

26. Rules and Regulations (District Demand No. 8)

The District demands the deletion of the word "reasonable" as a modifier of the Board's right under Article 12, to adopt rules and regulations. The union opposes on the ground that the Board should not have given it the right to adopt "unreasonable" rules and regulations.

The union has a point. The demand is denied.

27. Work Schedules (District Demand No. 10)

The District demands the deletion of the fourth paragraph of Article 16, which deals with the effect of future legislation lowering the length of the workweek on the ground that it is superfluous. The union opposes on the stated suspicion that "the fire district is seeking to accomplish more than its stated objective", and because the demand is not supported.

The language, however, merely binds the parties to follow any future statutory enactment regarding the length of the workweek, an obligation already laid upon them, and the language of the fourth paragraph is superfluous. The demand is granted.

28. Exchange of Duty (District Demand No. 12)

The District demands that Article 20 require the fireman exchanging duty to provide a backup man for his exchanged shift against the eventuality that the individual agreeing to cover the shift does not show up. It states that lack of such provision has presented operational problems, on the testimony, to the District it should not be asked to undergo. It also asks to limit such exchanges to two (2) tours per year, stating that disrupting a fixed crew more frequently than that causes disharmony and loss of efficiency. The union opposes both demands on the ground that no comparable practice elsewhere was shown and no need for it was evident.

The current agreement, Article 18, provides that exchange agreements shall be written and approved by the Shift Officer, and allows the Officer to disapprove if the exchange adversely affects the function of the Department. The problem the District seeks to meet apparently is limited to only a few (not more than 10 percent (10%)) of the employees complement. Rather than require the automatic provision of a backup man, therefore,

the real answer lies in better enforcement of the current agreement. It is, accordingly, awarded that there shall be added to Article 20 language that will require any firefighter who exchanges a shift where the exchanging firefighter fails to show up as agreed thereafter to provide a backup for any exchange; and to require that the second sentence of Article 21 shall apply only to two (2) exchanges per year, and that other exchange requests beyond that shall be "at the sole discretion of the Chief or his delegate.

29. Education Benefits (District Demand No. 17)

The District demands that Article 25 be amended to limit the reimburseable courses taken by firefighters to firemanic courses. It also seeks to have any scholarship or benefit money received deducted from the amount paid for. The union opposes, and states that no comparable limitation appears in other firefighter contracts.

The problem is that at certain institutions, courses (catering or cooking were cited as examples) are counted towards a degree in Fire Science even though not firemanic-related in actuality. The District apparently

has no control over this matter, despite the language in the contract. There is, on the other hand, no problem with deduction of scholarship or other benefit money, to avoid the employees collecting twice for the same course or courses. This portion of the demand is granted.

As to the firemanic-related courses, the District demand is granted only to the extent that language shall be added that non-firemanic courses, or non-firemanic-related courses shall be paid for only at one half (1/2) fee even though the relevant course counts towards a degree, effective January 1, 1980.

30. Officer Differential (Union Demand No. 4)

The union demands that Article 14, Salary, Section E, be adjusted to provide a pay differential above firefighter of 27.34% for Lieutenant and 42.34% for Captain. It states that it seeks to restore a previous pay practice begun in 1969. The District opposes the demand and denies that such a differential reflects past practice. It states that the union so alleges because the current (and the longstanding historical)

differential is a combination of a percentage (ten percent (10%)) plus two (2) seven hundred fifty dollars (\$750.00) increments which have not changed and which have resulted in some compression of the salary differentials over the years in full percentage terms, (Association Exhibit No. 10). The union also cites other districts as being ahead of Fairview in this respect (Association Exhibit No. 9). The District says such comparisons are meaningless because other districts have different designations and different duties. It adds that (District Exhibit No. 5) the cost of this demand will be thirty thousand two hundred forty dollars (\$30,240.00) in 1979, and twelve thousand three hundred forty one dollars (\$12,341.00) in 1980, and that the existing differentials have not created a problem.

The current differential, which began as 27.34% for Lieutenants and 42.34% for Captains in 1969 has necessarily narrowed in the past ten (10) years because of the fact that part of it is expressed in flat amounts. It currently amounts to 18.57% for Lieutenants (Association Exhibit No. 10), and approximately 34.09% for Captains, if my arithmetic is correct. There is no one in the Captain's

position in Fairview at this time, unlike other Districts such as Hartsdale and Greenville, and the functions performed by the Lieutenants are analagous to some degree to those performed by the Captains in other Districts. The District brief appears to concede that the differentials in Fairview are lower than surrounding districts (page No. 15). The evidence appears to show that Greenville has a 27.4; 32.1 and 37% differential; Hartsdale has a 23.5% differential; and Eastchester has a 20% differential (Association Exhibit No. 23). These differentials, of course, are not wholly relevant here since they are between Captain, not Lieutenant, and Firefighter. The width of the spread is, thus, not wholly applicable in the case of Fairview. Furthermore, a percentage differential is the appropriate way to maintain a proper rate spread between labor grades and avoid the sort of compression that has affected Fairview. Accordingly, in this matter, it will be awarded that Article 16, Section E be amended effective July 1, 1980 to provide a 20% differential between first grade firefighter's salary and that of Lieutenant, and a 35% differential between first grade

firefighter and that of Captain, and eliminating the seven hundred fifty dollars (\$750.00) flat amount increments that are currently provided therein.

31. Compensation (Union Demand No. 2)

The union demands that Article 14, Salary Schedule, be amended to reflect a seven percent (7%) increase in salaries effective January 1, 1979, on top of an adjustment, effective that same date, of some five percent (5%) to reflect the union statement of the increase in the Consumer Price Index for July 1, 1978 to December 1, 1978. This, the union states, would raise first grade firefighters to nineteen thousand seven hundred seventy four dollars (\$19,774.00) effective January 1, 1979, and to twenty one thousand one hundred fifty eight dollars (\$21,158.00) on January 1, 1980. Other salary schedules set forth in Article 14, Sections A, B and C presumably would be eliminated as superfluous and new calculations inserted to reflect the raises actually granted.

The District did not, at the hearing, take any position. In its brief, page No. 13, it stated that the

Panel should consider only an increase which would restore Fairview salaries to their proper relationship to the levels set in Hartsdale and Greenville. It specified no amount or percentage figure.

A substantial portion of the testimony, both oral and written was devoted to this vital issue, not suprisingly. The union stated that its request was fully justified on the basis of the facts required by Section 209.4 of the Taylor Law to be considered in determining such adjustments. It stated that Fairview, by reason of its character, required a greater workload and offered more hazards than the four (4) Districts it used as comparisons (to wit, Greenville, Hartsdale, Eastchester and Harrison). It stated that (Association Exhibit No. 7) the testimony clearly showed that Greenville and Hartsdale firefighters actually received more pay than Fairview in 1978 considering the greater overtime opportunities for Hartsdale (Association Exhibit No. 3) and Greenville firefighters (Association Exhibit No. 7, testimony of Greenville firefighter President Ferguson), despite the fact that the respective contract base salaries

were somewhat less than those set forth in Article 14 of the Fairview agreement.

The union also pointed out that a Greenburgh first grade police patrolman, a comparable level to first grade firefighter, made, in 1978, a base of eighteen thousand seven hundred eighty six dollars (\$18,786.00), one thousand one hundred eighty six dollars (\$1,186.00) more than a Fairview firefighter, even though the same taxpayers paid the salaries, and despite the fact that (Association Exhibit No. 18), firefighter deaths more than doubled police deaths, nationwide, in 1978, thus making the firefighter job more hazardous. The union also pointed to substantial increases in the private sector rates, such as telephone workers (Association Exhibit No. 24) and Auto Worker members employed as janitors (Association Exhibit No. 22).

Furthermore, the union stated, the Consumer Price Index for the New York-Northeastern New Jersey area had risen, since the employees' last raise in July 1, 1978, from 196.5 to 219.9 in October 1979, an increase of 11.9% which will erode, the union states,

the spending power of its members. The union continues that the New York Fire Districts have no constitutionally imposed debt or tax limits, and that firefighters' salary levels are exempt from the statutory limits of Section 176 (18) of Town Law. The District, the union says is, on the testimony of Mr. Fennell and Association Exhibit No. 1, fully capable of paying for any increase, either with present funds or by borrowing, if that is necessary for a fair and just result. The budgetary practices of the district have been conservative, and there is money perhaps in the capital or equipment reserve, to meet any unanticipated expenditures.

The District counters that Fairview should not suffer for responsible and conservative fiscal management which has been its course in response to the expressed desires of the voters who do not wish to see Fairview go the way of New York City, Yonkers, or Long Beach into a fiscal morass. It intimates that an excessive increase will result in reduction of services or an extraordinary tax burden, both detrimental to the community.

Moreover, it continues (District Exhibit Nos. 16, 17 and 18) it has shown that firefighters report for work on one hundred fifty two (152) days per year, a substantial portion of which was not spent at emergencies, and even the emergency time was such that a portion of it involved little or no exposure to danger. The increase in alarms (Association Exhibit No. 20 and District Exhibit No. 4) has been gradual since 1975, while the increase in pay has been substantial. Furthermore, the District continues, the Hartsdale and Greenville Districts have traditionally been those whose situation and job requirements have been most comparable to Fairview (District Exhibit No. 13); it regards Eastchester as wholly inappropriate for such a comparison (District Exhibit No. 14) because of greater assessed property, more personnel; station equipment and alarms. It regards Harrison and its method of operation as in no way comparable to Fairview; where Harrison personnel merely drive vehicles and use a large volunteer force. It rejects any comparison with private industry.

The District states that, as to Greenville and Hartsdale, the pre-1978 pattern pegged Fairview

salaries lower than these two (2) comparable districts. The reason was the lower median family income, and lower tax rates, District Exhibit Nos. 2, 2A, 3, 13). This pattern was broken in the Fairview arbitration award and contract for 1977-1978 and Fairview was pushed higher than its normal comparison districts. The District would restore that relationship and bring heavy tax increases to a halt. The tax rate increases and the pay increases have far outstripped, it says, the increases in assessed property evaluations, which has curtailed ability to pay and begin to generate taxpayer resistance. It views the union suggestions as to how increases could be paid by borrowing without severely affecting taxes as seeking a drastic change in policy and practice it could not countenance. It cites additional costs to the District in maintaining firefighters, such as retirement plan costs (forty two percent (42%) of earnings) and total fringe costs of sixty one percent (61%) of earnings (District Exhibit Nos. 8 and 10).

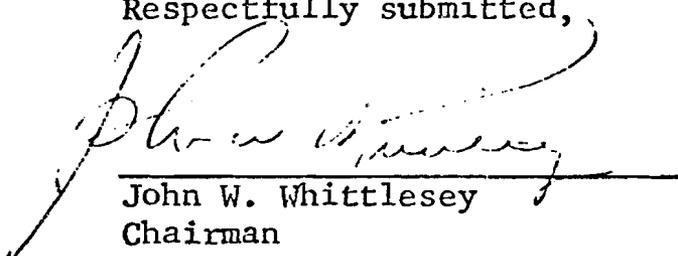
Any assessment of the appropriate salary increases must take into account, as the parties have

above, and has been done in the Panel's consideration of this case, the listed statutory factors set forth in Section 209.4 of the Act. Clearly, an award which merely held the line would not be responsive to the problems of increasing cost-of-living, workload and hazards for the firefighter. Equally important are the considerations of the actual situation of the District, and the effect on it of any excessive increase. The District cannot be said to lack, however, the ability to pay a reasonable salary adjustment, even without resort to the extraordinary measures suggested by the union. Also to be taken into account are the increased costs to the District of granting, in whole or in part, other union demands, as hereinbefore set forth, and the effect on the public interest and welfare of any compensation adjustment.

It is clear from the testimony, and is reflected in the parties briefs, that Fairview has most closely compared with Hartsdale and Greenville, and continues to do so, with respect to character of District; comparable jobs and job requirements and qualifications therefor. Thus, while cost-of-living increases urge

that an appropriate increase be furnished, a major factor in such result must be a beginning to restore traditional relationships. This will best be achieved by awarding, for 1979, taking all circumstances into account, a 6 1/4% increase, and, effective January 1, 1980, a 6 1/2% increase which is exactly the same as granted Hartsdale and Greenville. The increase for 1979 will bring first grade firefighters up to eighteen thousand seven hundred dollars (\$18,700.00), and compares with 7% increases given Greenville and Hartsdale for that year. The above increases are accordingly awarded, as is a two (2) year term of contract effective January 1, 1979.

Respectfully submitted,



John W. Whittlesey
Chairman

Celestine Kelly

Consent as to items:
3, 4, 8, 10, 16, 17, 18,
20, 23, 24, 25, 26, 29
and 30

Dissent as to items:
1, 2, 5, 6, 7, 9, 11, 12,
13, 14, 15, 19, 21, 22,
27, 28 and 31

Terence O'Neill

Consent as to items:
1, 2, 5, 6, 7, 9, 11, 12, 13,
14, 15, 17, 18, 19, 21, 22, 24,
25, 26, 27, 28, 29 (except for
non-firemanic courses) and 31

Dissent as to items:
3, 4, 8, 10, 16, 20, 23, 29
(as to non-firemanic courses),
30

STATE OF NEW YORK)
COUNTY OF NASSAU) ss:

MAY 19 1980
COURT CLERK

On this 18th day of March, 1980, before me personally appeared Terence M. O'Neil, to me known to be the individual described in and who executed the foregoing instrument and acknowledged to me that he executed the same.

Bernice Kamen

BERNICE KAMEN
NOTARY PUBLIC, STATE OF NEW YORK
No. 38 12000
Qualified in Nassau County
Commission Expires March 27, 1980

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

STATE PUBLIC EMPLOYMENT RELATIONS BOARD
MAY 19 1980
CONCURRENCE

----- x
In the Matter of the Arbitration :
-between- :
THE FAIRVIEW FIRE DISTRICT, :
Public Employer, :
-and- :
FAIRVIEW PROFESSIONAL FIRE :
FIGHTERS ASSOCIATION, INC., LOCAL :
1586, IAFF, :
Employee Organization :
----- x

PERB Case Nos.
M78-674
IA-113

CONCURRING OPINION

As the Employer representative on the panel, I voted along with the Chairman in favor of Item 31, Compensation. That vote necessitates a brief concurring opinion in this matter.

During the course of the executive sessions, it became apparent that the District's position that Fairview's rates not exceed those of Hartsdale and Greenville would not be sustained. I strongly believe that the District's position was justified, particularly in view of the fact that Fairview pays longevity and Hartsdale and Greenville do not. My decision to finally

concur with the Chairman's position was influenced by the total-
ity of the award, as well as by the length of time which has
spanned this proceeding. By the time this award is published,
it will almost be time to reconvene the negotiating committees
and start the bargaining anew. In addition, were it not for the
disparities in the rates with the surrounding comparable com-
munities, the percentage increases would have been justifiable
under present and past economic conditions.

While the award continues the inequities the District
believes exist between itself and comparable communities, I
recognize that it was impossible to cure all of these in one
award. These goals must be pursued and achieved in future
negotiations.

Dated: March 18, 1980



Terence M. O'Neil

STATE OF NEW YORK)
COUNTY OF NASSAU) ss:

On this 18th day of March, 1980, before me personally
appeared Terence M. O'Neil, to me known to be the individual
described in and who executed the foregoing instrument and
acknowledged to me that he executed the same.



Notary Public

BERNICE KAMEN
NOTARY PUBLIC, STATE OF NEW YORK
No. 25115563
Qualified in Nassau County
Commission Expires March 3, 1980

