

STATE OF NEW YORK PUBLIC EMPLOYMENT RELATIONS BOARD

NYS PUBLIC EMPLOYMENT RELATIONS BOARD
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APR 17 1989

In The Matter of The Interest Arbitration Between

LAKE MOHEGAN PROFESSIONAL FIRE FIGHTERS ASSOCIATION
(I.A.F.F. LOCAL 2956)

AND

LAKE MOHEGAN FIRE DISTRICT

OPINION

AND AWARD

PERB Case No.
IA87-6; M86-531

APPEARANCES: For the Lake Mohegan Fire District

Philip Hersh, Esq.
Richard K. Zuckerman, Esq.

For the Association

Duncan C. Mac Rae
Executive Vice President
New York State Professional Fire Fighters Association

BEFORE: Public Arbitration Panel

Peter A. Prosper, Public Panel Member and Chairman
Thomas F. DeSoye, Esq., Employee Organization Panel Member
Terence M. O'Neil, Esq., Employer Panel Member

The Lake Mohegan Fire District is located in northern Westchester County several miles outside Peekskill, and serves parts of the towns of Yorktown and Cortlandt. The District is approximately 30 to 40 square miles in area, and contains a population of 35,000 to 38,000 residents. Although mainly a residential area, the District contains the Jefferson Valley Mall, a two-level shopping complex which houses 128 retail establishments; four nursing homes; the Peekskill Community Hospital; and sixteen public and parochial schools. The tallest building in the District is the three-floor Peekskill Community Hospital. The District employs seventeen paid fire fighters (exclusive of the Fire Captain) who staff three fire houses--the main station on Route 6, and substations at Jefferson Valley and Furnace Woods. Staffing at the main station consists of two fire fighters plus the Captain and a dispatcher during the day, two fire fighters in the evenings and at night. The two substations are staffed twenty-four hours per day with one fire fighter on each of two shifts. Each unit has a cadre of volunteer firemen.

The Lake Mohegan Fire District (hereinafter called the "District") and the Lake Mohegan Professional Fire Fighters Association, Local 2956 (hereinafter called the "Association") engaged in extended negotiations for a successor Agreement to the one which expired on December 31, 1986. After numerous meetings and negotiations sessions, impasse was declared. The Director of Conciliation of the Public Employment Relations Board (hereinafter called "PERB") assigned a mediator to assist the parties in their attempts to resolve their differences and, despite every-

one's best efforts, agreement was not achieved. On June 5, 1987, the Association submitted a petition for compulsory interest arbitration; and on June 25, 1987, the District filed its response. An arbitration panel was named by PERB on July 17, 1987, pursuant to the provisions of Civil Service Law, Section 209.4, for the purpose of making a just and reasonable determination of the matters in dispute. At that time the panel consisted of Peter A. Prosper, Public Member and Chair; Ronald Jordan, Commissioner of the Lake Mohegan Fire District, Employer Representative; and Walter Ferguson, District Vice President of the New York State Fire Fighters Association, Employee Member. The two parties continued to meet in an attempt to resolve the impasse, meeting further on August 18, 1987, and December 3, 1987. The District notified PERB that it was withdrawing Ronald Jordan as the Employer Member of the Arbitration Panel and replacing him with Terence M. O'Neil, Esq. A revised designation form was issued by PERB on February 23, 1988. The Association notified PERB on June 24, 1988, that it was withdrawing Walter Ferguson as the Employee Member of the arbitration panel and replacing him with Thomas F. DeSoye, Esq. A revised designation form was issued on June 29, 1988. It is noted that no meetings of the arbitration panel had yet taken place by June 29. Hearings scheduled for August 20, November 17, and December 7, 1987 were mutually cancelled by both parties because of their continuing attempts to come to a resolution of the outstanding issues. Several subsequent hearing dates were cancelled because of court appearances and other commitments of persons from

one or both parties. Because of negotiations, panel changes, illness and other delays, the first hearing was held at the Jefferson Valley Fire Station (as were all subsequent hearings) on August 26, 1988. Additional hearing dates were November 15, 1988, January 3, February 16 and May 4, 1989. Mr. DeSoye was unable to be present at the May 4, 1989, hearing. Frederick Reich, Esq., requested and was granted permission to be an observer for Mr. DeSoye. The Association waived Mr. DeSoye's presence on that date, and representatives of the District officially noted that there were no objections to proceeding without Mr. DeSoye for that one hearing day.

Both parties formally waived a transcript of the proceedings and directed the panel to rely on its own notes as well as the documents submitted. Both parties were afforded ample opportunity to submit exhibits and other documentary evidence, examine and cross-examine witnesses, to make oral argument, and otherwise support their respective positions. The parties submitted over one hundred thirty exhibits. The Association presented testimony from Ed Fennell, Self-Employed Consultant on Government Finance; Kenneth Polito, President of Local 2956; and Walter Ferguson, District Vice President of the New York State Professional Fire Fighters Association. The District presented testimony from Richard Strauss, Captain, Lake Mohegan Fire District; and Roland E. Tomkins, Treasurer of the Lake Mohegan Fire District.

The Public Arbitration Panel met in executive session in New York City on May 17, 1989. The Panel seriously considered and evaluated all exhibits, arguments and other submissions of the parties taking into consideration the following statutory criteria which the Panel is required to observe:

- a. comparison of the wages, hours and conditions of employment the employees involved in the arbitration proceeding with the wages, hours, and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities;
- b. the interest and welfare of the public and the financial ability of the public employer to pay;
- c. comparison of peculiarities in regard to other trades or professions, including specifically (1) hazards of employment; (2) physical qualifications; (3) educational qualifications; (4) mental qualification; (5) job training and skills;
- d. the terms of collective agreements negotiated between the parties in the past providing for compensation and fringe benefits, including, but not limited to, the provisions for salary, insurance and retirement benefits, medical and hospitalization benefits, paid time off and job security.

The issues at impasse are: Recognition; Salary; Longevity; Overtime; Annual Leave; Hospitalization and Dental; Holidays; Sick Leave; Working Hours and Schedules; Uniforms; Association Business; Vacation Pay and Paydays; Health and Safety; and Arbitration.

RECOGNITION CLAUSE

The Association proposes a change in the current recognition clause to accurately reflect the name of the Association. The present wording is as follows:

The District recognizes the Lake Mohegan Paid Firemen's Association, Inc. as the exclusive representative of all employees of the District, for the purpose of negotiating collectively, the terms and conditions of their employment, and entering into a written agreement with respect thereto. The term "employees" shall mean all full time paid fire fighters employed by the District.

The proposed wording change affects only the first part of the clause, and is as follows:

The District recognizes the Lake Mohegan Professional Fire Fighters, Inc., Local 2956, I.A.F.F., as the exclusive representative of all employees of the District....

The only change proposed by the Association is the correction of the name of the Association. Since the term "employees" is defined elsewhere in the clause, no substantive alteration would be made by adoption of the proposed wording change.

Accordingly, it is **AWARDED** that the sentence be: "The District recognizes the Lake Mohegan Professional Fire Fighters, Inc., Local 2956, I.A.A.F, as the exclusive representative of all employees of the District, for the purposes of negotiating collectively, the terms and conditions of their employment, and entering into a written agreement with respect thereto. The term 'employees' shall mean all full time paid fire fighters employed by the District."

SALARY

The Association seeks a two-year salary increase as follows:

	<u>Current (1986)</u>	<u>1987 Proposed</u>	<u>1988 Proposed</u>
Entry Level	\$14,500	\$24,614	\$29,506
Second Year	17,747.50	26,614	31,506
Third Year	20,995	28,614	33,506
Fourth Year	24,242.50	30,614	35,506
Top Rated	27,490	32,614	37,506

The Association supports its proposal by arguing that similar fire districts in Westchester County have provided higher wages than are earned by fire fighters in the Lake Mohegan Fire District, citing the following: Fire Districts in Westchester County are Fairview, Greenville, Hartsdale and Eastchester; municipal fire departments Harrison, Larchmont, Mamaroneck, Mount Vernon, New Rochelle, Peekskill, Pelham, Pelham Manor, Port Chester, Rye, Scarsdale, White Plains, and Yonkers. The Association asserts that its salary schedule is substantially lower than those of many other fire districts and fire departments in Westchester County, and its pattern of salary increases has been inferior for the past several years. In addition, living costs are very high and are rising at substantial rates. Housing costs in Westchester County are very high, as documented by various newspaper articles as well

as realtor research studies. Food, fringe benefits and other costs are rising rapidly, creating a compelling need for a substantial increase in the wage rate in order to maintain real income.

The Association also asserts that the District has the ability to pay the salary increases it proposes. Mr. Edward Fennell testified concerning the financial condition of the District after evaluating annual reports and annual budgets, and other financial data.

The District presents salary data for Peekskill, arguing that Peekskill is the appropriate comparison unit. Other fire districts in Westchester County are either municipalities, and therefore inappropriate, or are dissimilar in other ways.

The District does not plead an inability to pay a salary increase, but does point out that its costs are rising, creating somewhat of a hardship on residents of the District. Health insurance costs have increased in recent years, rising by sixty or more percent. Other costs, while not rising so steeply, are still the source of concern.

On the other hand, the Consumer Price Index, an indicator of the cost of living, has been rising less rapidly in recent years, creating a more comfortable position for wage earners. The CPI has risen an average of about four percent per year for the past seven or eight years, and about that same rate during the term of the proposed contract term. Food and energy costs, a substantial portion of a

consumer's budget, have risen more slowly than other components of the Index. This moderation in the rise of prices should, in turn, create a moderation in wage demands.

The District points out that recent contract settlements for fire fighters for the years 1987, 1988 and 1989, have averaged 6.1 percent, 5.7 percent and 5.66 percent, respectively. Additionally, the Bureau of National Affairs, in its August 25, 1988 newsletter reported that negotiated State and local government wage increases averaged 5.4 percent. The Bureau of Labor Statistics recently reported that major collective bargaining settlements in private industry averaged about 2.5 percent. Finally, the District calculates the increase in the Consumer Price Index for the ten years between 1976 and 1986 as being 82.9 percent, while the ten-year earnings for a Lake Mohegan fire fighter amounted to 228 percent, a substantial increase in real earnings.

The Association and the District differ in their views concerning the appropriate fire districts for comparative purposes, the Association choosing the entire County of Westchester and the District choosing Peekskill. Although in many respects the entire county is relevant for evaluation, there are sufficient differences among some fire districts in size and financing that they are less useful for comparative purposes. Peekskill is the most comparable municipality for these purposes, not only because of size but also proximity to the Lake Mohegan Fire District, plus the

fact that both the District and Association have used Peekskill for comparison in past negotiations and, indeed, in present negotiations prior to invoking interest arbitration.

The District argues for a moderation in wage increases because of its substantial increases in health insurance premium costs. It is noted here that those increases were announced and became effective near the end of the period under consideration. Therefore, discussion of those increases are appropriate for the next negotiations between the parties, not for this interval.

Since the District is the lowest paid in the County, and based on the higher percentage raises given in 1987, and the salaries in Peekskill, the Panel believes the Association should receive a percentage raise somewhat higher than what might be considered average increases.

After due deliberation and discussion, the following salary increases are **AWARDED**: Effective January 1, 1987, an across-the-board increase of seven (7%) percent shall be applied to the schedule on page 7 of this document, and included in the Contract. Effective January 1, 1988, an across-the-board increase of six and-a-half (6.5%) percent shall be applied.

LONGEVITY PAYMENT

The Association proposes no change in the amount of longevity payment, but wishes to add a phrase to the clause. Currently, the paragraph is as follows:

Each employee of the District shall receive a longevity increment of \$200.00 after each five (5) years of service.

Payment of longevity increments to be reflected in the first pay following the anniversary date of the member's appointment to service with the District.

The Association proposes a change in the second sentence, which would now be:

Payment of longevity increments shall be paid in a separate check, the first pay day following the anniversary date of the member's appointment.

The Association provides no rationale for its proposal, nor can its rationale be deduced. **Therefore, the proposal of the Association is denied.**

OVERTIME PAYMENT

The expired Agreement provides that overtime shall be paid at the rate of time-and-a-half. The Association proposes that when the District determined overtime to be necessary, that it be offered to Association members prior to calling relief drivers.

This proposal would require a major change in the Agreement. The arbitration process is not the appropriate forum to make such major changes. The parties must negotiate any changes in this section of the Agreement. **Therefore, the Association's proposal is denied.**

ANNUAL LEAVE

Currently, Lake Mohegan fire fighters are granted annual leave as follows: In the second to fifth year, two weeks (14 consecutive days) with full pay; from the sixth through the tenth year, three weeks (21 consecutive days) with full pay; from the eleventh year on, four weeks (28 consecutive days) with full pay. The Association proposes that for the eleventh year on, employees receive five weeks with full pay.

The proposal of the Association represents an increase in leave of one week after eleven years of service. Considering financial AWARDS made, it is deemed appropriate to let the parties negotiate any changes to annual leave in their next negotiation process. **Therefore, the proposal of the Association is denied.**

HOSPITALIZATION AND DENTAL

Currently, the District pays the full premium for group health insurance. It also contributes \$360.00 per employee for the Family Dental Plan and \$180.00 for the Individual Dental Plan. The Association seeks a change in which the District shall pay the entire premium for a dental plan.

Considering the financial AWARDS granted elsewhere in this Report, the implementation of this proposal would create a financial imbalance. **Therefore, the Association' proposal is denied.**

HOLIDAYS

The Association proposes adding Lincoln's Birthday and Columbus Day to the present nine holidays provided by the Agreement. The Association argues that other similar districts provide more than nine holidays per year, and by granting the two proposed, the employees of Lake Mohegan Fire District would be made roughly equal to employees of those other districts.

The arguments of the Association have merit. **It is AWARDED that Columbus Day be added to the holiday schedule for the Lake Mohegan Professional Fire Fighters Association, effective in the second year of the Award.**

SICK LEAVE

The current contract provides for sick leave at the rate of one day per completed calendar month. In addition, sick leave may be accumulated up to a maximum of 150 days. Unused sick leave up to 150 days will be paid to a retiring employee at the rate of pay during which the sick leave was accumulated. The last sentence of that paragraph states, "Any unused portion of annual sick leave in excess of 150 days is to be paid at the end of the calendar year." The Association proposes to add the following to that sentence: "at the rate of 12 hours per day."

The Association provides no compelling arguments for its proposal, therefore, the proposal is denied.

WORKING HOURS AND SCHEDULE

The first sentence of the clause states: "The regular work week shall consist of forty hours." The Association proposes that the sentence be modified as follows: "The regular work week shall consist of forty hours, 10-hour day shifts (07:30-17:30) and 14-hour night shifts (17:30-07:30).

The Association has offered no compelling reason for changing the present wording of the Agreement. Any such change might better be left to negotiations between the parties. **The proposal of the Association is denied.**

UNIFORMS

The Association proposes to increase the annual uniform allowance to \$250.00 from the present \$200.00. It also proposes that the payment be made by separate check in the second pay period in the month of June each year.

Because of other financial AWARDS made herein, this proposal of the Association is denied.

ASSOCIATION BUSINESS

The Association proposes a new clause which would permit employees a maximum of twelve (12) working shifts off each year without loss of pay for the

purpose of attending association activities and/or conventions.

The inclusion of a clause granting Association or union officers paid time off to conduct association business or to attend conventions is not unusual in public employee contracts throughout the State of New York. However, this clause for this particular unit, and the precise number of days for such business is best left to the parties to determine, rather than having such imposed by this Arbitration Panel.

Therefore, the proposal of the Association is denied.

VACATION PAY AND HOLIDAYS

The Association proposes a new clause concerning the mechanics of timing of payment for holidays and vacations. The proposed clause is:

When a member of the Association goes on vacation, they may notify the District Treasurer at least ten (10) days in advance of the commencement of his vacation and within ten (10) days following notification the member shall receive the total number of paychecks which would normally fall within the members vacation.

Paydays will be on every other Thursday of a payday, except if a holiday falls on a Thursday of a payday, the payday will be on the Wednesday before. The Treasurer will have the paychecks available at 0730 on each payday. Employees will be given the opportunity to cash or deposit their paychecks without loss of pay if they work a day shift on a payday.

The part of the Association's proposal regarding timing of paychecks prior to going on vacation has merit. An employee on vacation most likely could use the money

for that vacation and may be out of town, making it impossible to pick up his paycheck on the regular payday. So long as the District Treasurer is notified in advance, there should be no problem to pay the employee the funds to which he is entitled. However, the District Treasurer must be given sufficient prior notice in order to make the determinations necessary to provide the check(s) for the vacationing individual. The ten days suggested by the Association is just too short to be practicable.

Regarding the second paragraph, several problems immediately arise. First, if an individual is the only person on duty at one of the substations, it would be difficult to permit him to leave his post in order to cash or deposit his paycheck. Other aspects of the paragraph are too unworkable to be considered at this time.

The following new section to the contract is AWARDED:

When a member of the Association goes on vacation, he may notify the District Treasurer at least thirty (30) days in advance of the commencement of his vacation, and the member shall receive, prior to his going on vacation, the total number of paychecks which would normally fall within the member's vacation.

HEALTH AND SAFETY

The Association proposes that the following new article be adopted:

There shall be created a Health and Safety Committee consisting of two (2) members of the Association and two (2) members of the District. The Committee shall meet at least quarterly at a mutually convenient time.

While the proposal has merit, the concept of a health and safety committee should be examined, analyzed and discussed between the parties prior to adoption, if that is finally deemed advisable. Such discussions are best left to the parties, and so, too, the decision of whether to create a committee.

Therefore, the proposal of the Association is denied.

ARBITRATION

The Association proposes final and binding arbitration as the last step in the grievance procedure. Currently, the final step is appeal to the full Board of Fire Commissioners, with the Board having final determination.

Most contracts in both the private and public sectors contain grievance procedures with final and binding arbitration as the last appeal step in the process. The proposal of the Association is a reasonable one, but requires other changes in the procedure as well.

The following arbitration clause and grievance procedure is AWARDED and shall replace the current Article XVII:

Section 1. Definitions: Unless otherwise expressly stated, the following terms shall, for the purpose of this Article, have the following meanings:

A. "Arbitrator" shall mean a neutral arbitrator chosen under the Voluntary Labor Tribunal Rules of the American Arbitration Association.

B. "Association" shall mean the Lake Mohegan Professional Fire Fighters Association, Local 2956.

C. The "date of the alleged grievance" is that date upon which the event or condition constituting the grievance occurred, or that date upon which the grievant knew or reasonably should have known of the event or conditions, whichever is later.

D. "Grievance" shall mean a claim by a unit member alleging a violation of a specific provision of this Agreement, and shall not include any matter which is not covered by the specific terms of this Agreement or which is covered by law. In the event of a grievance which affects the entire unit, the Association may submit a class grievance.

Section 2. Basic Standards and Principles:

A. Every employee covered by this procedure shall have the right to proceed personally or together with the Association's representative, or any other representative of the employee's choice, at Steps 1 and 2. The Association may proceed to the 3rd Step of this procedure provided the grievant also wishes to proceed.

B. Pursuit of any legal, statutory or other remedy covering the claim covered in the grievance bars further or subsequent proceedings for relief under this Agreement.

C. Time limits set forth herein may be extended or diminished only by mutual written agreement of all parties concerned.

Section 3. Procedures:

A. Both parties agree that grievance proceedings shall be kept as informal as possible at all levels of the procedure.

B. All grievances shall include the name and position of the aggrieved party, the identity of the provision of this Agreement involved in the grievance, the time when and the place where the alleged events or conditions constituting the grievance took place, the identity of the party responsible for causing the events or conditions if known to the aggrieved party, and a general statement of the nature of the grievance and redress sought by the aggrieved party.

C. All decisions shall be rendered in writing at each level of the grievance procedure. Each decision shall be promptly transmitted to the member, the Association and representatives of the District, if any.

Section 4. Time Limitations:

A. Failure at any level of the grievance procedure to communicate a decision to the aggrieved party, a representative of the aggrieved party and the Association, within the specified time limit, shall permit the lodging of an appeal at the next level of the procedure within the time which would have been allotted had the decision been communicated by the final day.

B. If a decision at one level is not appealed to the next level of the procedure within the time limit specified, the grievance will be deemed to be discontinued and further appeal under this Agreement shall be barred. Regardless of any other section of this Article, no grievance will be entertained as described herein and such grievance will be deemed waived unless the grievance is commenced at the first available level within thirty (30) calendar days after the member knew or should have known of the act or condition on which the grievance is based.

Section 5. Grievance Procedure:

The grievance procedure shall consist of the following:

First Step.

The first procedural stage shall consist of the employee's presentation of the grievance in writing to the Captain or a representative designated by the Captain. A written decision or determination thereon shall be made by the Captain or his designated representative within fourteen (14) calendar days from the time of submission. A copy of his decision shall be mailed to the aggrieved employee, the Association and the District. The Captain may hold an informal hearing at this level if he believes it is necessary.

Second Step.

A. If the employee is not satisfied with the decision at Step 1, he/she may appeal the grievance to the Board of Fire Commissioners by written notice to the District within fourteen (14) calendar days of the date of the decision at Step 1.

B. Within fourteen (14) calendar days after receipt of the appeal, or at its next regularly scheduled meeting, whichever is later, the Board of Fire Commissioners shall consider the grievance in executive session. The Board may hold a hearing if it believes it is necessary.

C. Within seven (7) calendar days after it has completed its consideration of the grievance, the Board of Fire Commissioners shall render a written decision on the grievance.

Third Step.

A. If the Association and the grievant are not satisfied with the decision at Step 2, it may submit the grievance to arbitration by written notice to the District within fourteen (14) calendar days of the date of the decision at Step 2.

B. The written notice to the District shall be a copy of the "Demand for Arbitration" submitted by the Association to the American Arbitration Association.

C. The written report of the Arbitrator shall contain a statement of the Arbitrator's findings of fact, reasoning, conclusions and binding award on the issues submitted. The Arbitrator shall have no authority to modify, alter, add to or subtract from any of the terms of this Agreement and shall be bound by its express terms.

D. The Arbitrator shall send a copy of his/her written report to the Association, the District and its representative(s).

E. Costs of the Arbitrator shall be equally borne by the Association and the District.

The above constitute all the proposals placed before us for evaluation and award. All other proposals of the District and the Union, whether or not specifically addressed herein, are rejected.

Respectfully submitted,

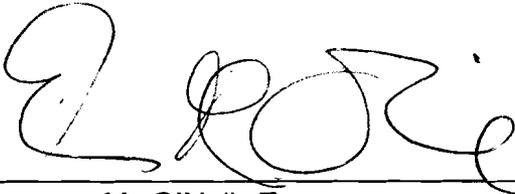
July 30, 1989


Peter A. Prosper
Public Panel Member and Chairman

Concur: all but -

Dissent: Salary

Date: 8/9/89


Terence M. O'Neil, Esq.
Employer Panel Member

Concur: All except

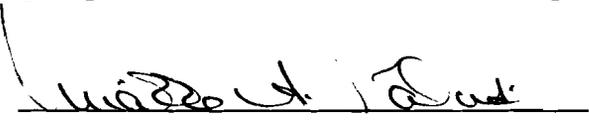
Dissent: Annual Leave

Date: 8/10/89


Thomas F. DeSoye, Esq.
Employee Organization Panel Member

STATE OF NEW YORK)
COUNTY OF SCHENECTADY) SS.:

On this 3rd day of July, 1989, before me personally came and appeared PETER A. PROSPER, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.



Notary Public

FRANK P. FLODI
Notary Public, State of New York
Qualified in Schenectady County
My Commission Expires April 30, 1991

STATE OF NEW YORK)
COUNTY OF NASSAU) SS.:

On this 9th day of August, 1989, before me personally came and appeared TERENCE M. O'NEIL, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

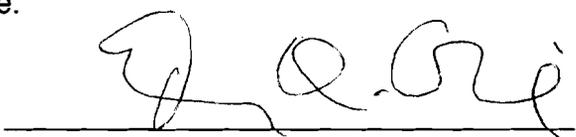


Notary Public

ALAN C. BECKER
Notary Public, State of New York
No. 31-4667155
Qualified in Nassau County
Commission Expires, December 31, 1990

STATE OF NEW YORK)
COUNTY OF Westchester) SS.:

On this 10th day of August, 1989, before me personally came and appeared Thomas F. DeSoye, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.



Notary Public