

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

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IN THE MATTER OF THE INTEREST ARBITRATION BETWEEN:

The Village of Scarsdale
Employer

-and-

OPINION AND AWARD

The Scarsdale Uniformed Fire Fighters Association
SUFA, Local 1394, IAFF, AFL-CIO
Union

PERB Case NO: IA 88 - 16 M - 87 - 497

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APPEARANCES:

For the Village

Rains and Pogrebin, P.C.
Craig Benson, Esq., of Counsel
Richard J. Rohan, Personnel Director

For the Union

Duncan C. MacRae, Executive Vice President, NYS Professional
Fire Fighters Association/
Louis DiFrancesco, President, Scarsdale Uniformed Fire Fighters
Association, SUFA

PUBLIC INTEREST ARBITRATION PANEL

Terence M. O'Neil, Esq. Employer Panel Member
Thomas F. DeSoye, Esq. Employee Panel Member
Joel M. Douglas, Ph.D. Public Panel Member and Chairman

Pursuant to Section 209.4 of the New York State Civil Service Law and in accordance with the rules of the Public Employment Relations Board (PERB) the above named Public Arbitration Panel was designated to make inquiry, determinations and issue an Award on various items submitted to impasse by the parties. A PERB appointed mediator had been assigned prior to the commencement of the arbitration process but was unsuccessful in resolving the dispute. The panel held hearings in Scarsdale New York on October 26, and

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CONCILIATION

November 28, 1988 and subsequently met in executive session in White Plains on February 1, 1989. At the arbitration hearings both parties were represented by the above appearances and were afforded full opportunity to present evidence, both oral and written, to examine and cross-examine witnesses and otherwise to set forth their respective positions, arguments and proofs. At the conclusion of the hearings both parties submitted closing briefs. This Award is based on the record as thus constituted and was drafted by Chairman Joel M. Douglas who is solely responsible for the language contained herein.

In making our determination the panel acted in accordance with and gave due consideration to the relevant statutory criteria as set forth in section 209.4 of the Taylor Law as cited below.

- a. comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours, and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities;
- b) the interests and welfare of the public and the financial ability of the public employer to pay;
- c) comparison of peculiarities in regard to other trades or professions including specifically,
 - 1) hazards of employment
 - 2) physical qualifications
 - 3) educational qualifications
 - 4) mental qualifications
 - 5) job training and skills
- d) the terms of collective agreements negotiated between the parties in the past, ...

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The parties submitted the following items to the Panel for their consideration and Award.

- 1) Salary
- 2) Contract Duration
- 3) Overtime Compensation
- 4) Vacation
- 5) Sick/Personal/Bereavement Leave
- 6) Holidays
- 7) Personal Days
- 8) Health Insurance
- 9) Life Insurance
- 10) Retirement Benefits
- 11) Compensatory Time
- 12) Retroactivity
- 13) Uniform Allowances
- 14) Disciplinary Procedure
- 15) Education Benefits

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1) SALARY

While numerous items were submitted to the panel for their consideration the primary focus was the issue of salary. The union is seeking an increase of 10% per year while the employer submits that they are willing to offer a reasonable salary adjustment in the successor Agreement. The union argues that the Village is one of the wealthiest in New York State, and perhaps the entire nation, and, as such, possesses more than the requisite ability to pay. In support of their position they produced municipal fiscal consultant Edward Fennel, who testified with respect to the financial condition of the Village of Scarsdale. He attested to the following:

- a) as of June 1, 1987 the Village had a General Fund budget balance of 1.5 million dollars (See UX#1)
- b) the May 31, 1988 audited General Fund balance was in excess of

1.4 million dollars (See UX#1)

- c) there is an unappropriated surplus in the General Fund balance of \$363,973 which will remain in the 1988/89 budget balances (See UX#1)
- d) there have been numerous General Fund budget surpluses in the annual village budgets. (See UX#1)
- e) there is an average of 7.5% margin of error between revenues budgeted (105%) and expenses budgeted (97.5%) for the period 1978/79 to the present.

He also noted that the Village is at 53.3% of the taxing limit for FY 89 and has a taxing margin of over \$11 million. Furthermore the Village also has budgeted \$695,000 for a contingency fund. Fennel was qualified as an expert witness and his unrefuted testimony was that the financial condition of the village was excellent.

The Union further argued that the recent Interest Arbitration Award (See UX#14) for the Scarsdale Police Department (PERB Case NO IA 87 - 23) provides for salary increases of \$2,000 effective June 1, 1987 and \$2,100 effective June 1, 1988. Since the second year of that Award coincides with the first year of the fire fighter contract the panel must award at least that amount in order to preserve the historical relationship between the parties. In support of this position the union cited the relationship between the two units and submitted prior Village PBA and SUFA contracts. These exhibits substantiate a long standing relationship between the raises given to each unit. (See UX# 2-13). SUFA also introduced into evidence the contracts from all the fire fighters districts and villages in the County of Westchester in order to verify county comparables. (See UX# 15-32) Also noted by the union was the fact that top management officials received raises of 6 % effective June of 1988 and that police lieutenants received increases of 6.7% effective June of

1988.

The Village, while not denying their ability to pay, argued that an increase of 10% per year was far in excess of the market rate. In support of their position they cited several arguments including the relative decline in the CPI over the past several years (See VX# 2 - 5). They submit that they are willing to make a reasonable salary adjustment without specifying what that amount might be. The comparable fire fighter settlements have been modest and not in the 10% range.

The Village further cites the increases awarded as a result of the PBA Interest Arbitration Award as suggested guidelines as to what the SUFA increases ought to resemble. They argue that the PBA increase was approximately in the 6% range per year. The Village prepared a spread sheet which sets forth various forms of compensation for fire fighters in contiguous municipalities. (See VX# 33) In accordance with that exhibit the union demands cannot be justified. In addition to the PBA Award the Village cites the recent contract settlements with the Village CSEA unit which provided for increases of six percent per year effective June 1, 1988 and June 1, 1989. (See UX# 59) The Agreement with the Teamsters and the Library units also provide for similar increases. The raise for library employees is 6% effective January of 1988 and 5.5% effective January 1989 and a 5% increase effective January 1990 with some protections against inflation for the unit. (See VX# 27)

FINDINGS

Wage and salary compensation is far from an exact science. However, in the instant case the relevant statutory guidelines and the data submitted by the parties provide the panel with the necessary information required to fashion an

Award. The ability of the employer to pay the going wage rate is well documented. The testimony of Fennel is credited. It should be noted however that ability to pay is but one of the statutory criteria that the panel evaluated in reaching their decision. Among the other data considered and afforded great accord was the recent Village of Scarsdale PBA Interest Arbitration Award. The \$2,100 increase, effective June 1, 1988, awarded Village police cannot be ignored. The parity relationship between the PBA and SUFA, as far as raises are concerned, is well documented. To alter said relationship without compelling reasons would be to do a disservice to both the parties and the process.

An analysis of other area settlements also supports the finding that a raise of \$2,100 in year one and an additional \$2,100 in year two is justified. See (UX# 55) Set forth below is a listing of salary adjustments for Westchester County fire fighter locals from January 1, 1988 forward^R was of assistance to the panel in formulating their Award. The Panel is aware that several of these Agreements were negotiated in prior years as part of a multi-year package and may have contained "give-backs" as part of an overall settlement. The same may be said of some of the prospective Agreements. However, in both cases the contracts do provide a general framework and a market rate under which settlements have occurred. The information in the chart was adopted primarily from VX# 7 and UX# 55.

2) CONTRACT DURATION

The Village suggested a two year Agreement while the Union was also amenable to a two year agreement if its other concerns were addressed.

FINDINGS:

The panel awards a two year agreement with salary and other changes, unless otherwise specified, retroactive to June 1, 1988. A multi-year Agreement assists both parties in achieving labor relations stability and avoids the necessity of continuous collective bargaining.

8) HEALTH INSURANCE

Both parties submitted proposals with respect to altering the health insurance status quo. The union is seeking the continued payment by the Village of the full cost of health insurance for their unit members as well as increases in certain dental benefits. SUFA's argument is primarily in response to the position taken by the Village which seeks premium contributions from new hires similar to the ones contained in the Police Interest Arbitration Award.

SUFA argues that with the exception of certain previously negotiated Agreements, as distinct from currently negotiated Agreements, there are no Westchester County contracts between uniformed fire fighter unions and their employers whereby the employee makes any health care contribution whatsoever. (See VX# 7) With respect to the parity arguments and the fact that new police hires will contribute a portion of the premium costs, the union claims that parity has never extended beyond salary and, with respect to fringe benefits, each group has traditionally been on their own.

Although denied by the Village, there is another argument that SUFA

claims is relevant to the health insurance premium contribution issue. At the conclusion of the police Interest Arbitration Award, the Village in an independent and unilateral action, raised the starting salary for police officers from \$15,000 (the starting fire fighter salary) to \$20,000. (See testimony of Rohan). They claim that the position taken by the Village is contradictory as the employer now receives a small premium contribution from new police officers however each new police officer, in partial exchange for the health care contribution, receives an increase in his/her base pay of \$5,000.00 .

The Village, citing the escalating costs of health insurance, both pre and post the dramatic increases in the State of New York Empire State Plan, is seeking contributions from new hires in order to provide much needed relief in this area. The fiscal arguments offered by the employer (See VX# 24-26) document the drastic rate increases and unless premium contributions are awarded then deficit problems might arise in the future.

The Village relies in part on the recent PBA Interest Arbitration Award which mandates that all new hires will pay ten percent of the premium cost for individual coverage and twenty-five percent for family coverage. That contribution continues until such time as the police officer attains the position of First Grade Patrolman (five years) when the employer will once again absorb the full premium cost. Furthermore the Award also provides an end to dual coverage for any new hire who is eligible to receive coverage through a plan provided by their spouse. There is also a provision for current police officers to receive an "in lieu" payment " of 25 % of premium costs if they can demonstrate that they are covered by another plan. The Village argues that if parity is to be implemented in the computation of salary then surely fringe benefits must be included in the parity calculations.

Other arguments cited for an employee contribution in this area include the fact that the recent Village settlements with the CSEA village wide unit (fact-finder's recommendation) and the library unit (mediator's proposal) provides for health care premium contributions from new hires. (See VX# 28)

FINDINGS:

The issue of rising health care costs is most serious and has been thoroughly addressed by the parties during this process. The contribution for new hires contained in the PBA Award and the parity relationship are noted by this panel. However several elements mitigate against a similar finding in this matter.

First, the panel is not convinced that there is no relationship between establishing a health insurance premium contribution for newly hired police officers and raising their starting salary by \$5,000.00. While said increase did not occur as a result of the PBA Award, or through the collective negotiations process, its timing and implementation is such as to lend some doubt as to the actual savings accrued.

Second, and perhaps most important, the record indicated that the Village has recently decided to switch carriers from the Empire Plan. The Panel believes the parties should first examine the savings attributable to this switch before implementing contributions from new hires.

Thirdly, despite the union's arguments with regard to the starting salary, we award that the language in the contract remain unchanged since the Village appears to be able to attract personnel with the current rates. While the panel has not awarded a premium contribution for new hires we do recognize that the two other Village proposals in this area may reduce the increasing costs of

health care without any significant impact on the unit. We accordingly award the Village's proposals with respect to dual health care coverage for new hires and the "in lieu " payments provision. These options can work to the mutual advantage of both the parties and can assist in reducing the total cost of health care premiums.

9) LIFE INSURANCE

The parties have previously negotiated a life insurance benefit which provides for an employer contribution of \$91.80 per year per employee. While premium costs have not risen to the extent that they have in health care, nevertheless the union argues that some adjustment is necessary. In support of their position they cite the life insurance benefits and contribution of surrounding communities. The Village opposes any increases in their premium contribution. The PBA Interest Arbitration Award raised the employers contribution to \$100.00 per year in June of 1988 in order to maintain existing benefits.

FINDINGS

The record documents that an adjustment in life insurance benefits is warranted and accordingly the panel awards an increase to \$125.00 effective June 1, 1989. This increase should maintain current life insurance benefits

ITEMS IN WHICH NO CHANGE WAS RECOMMENDED:

At the outset of the negotiations process and in the Declaration of Impasse submitted to PERB the parties proposed changes in and listed the following items as "open". During the course of the hearings, testimony was presented on some, but not all of these items. In each and every case the panel considered the available evidence and recommended no change from the current Agreement. Listed below is a summary of the items, the reasons for the preservation of the status quo, and why said proposals were rejected.

3) OVERTIME

The SUFA proposed a new system for overtime calculations. They argued that the present system works to their disadvantage. The Village proposed the continuation of the present system.

FINDINGS

The evidence does not support a compelling reason for changing the method by which overtime pay is calculated. Both the state and federal courts have addressed this issue and as long as the parties are in compliance with the existing rules and regulations no change is warranted. Should compliance become an issue the parties are well versed in other available remedies and alternative forums to pursue their claims.

4-7) VACATIONS, LEAVES, HOLIDAYS, PERSONAL LEAVE

The SUFA proposed increases in allowable vacation days (See UX# 74-75) leaves, personal leave and the number of paid holidays. (See UX# 65-69) The employer initially proposed decreases or the elimination of certain time-off with pay provisions. Subsequent employer positions rejected any changes in this area but supported the preservation of the status quo.

FINDINGS

The available evidence in the record does not support a change in this area. No undue harm has been done to either party in conjunction with these contractual provisions. These proposals are explicitly rejected.

10) RETIREMENT BENEFITS

The Village seeks a change in the current retirement plan whereby Article XII E of the Agreement would be modified so that once a fire fighter stops work he can no longer earn or accumulate additional benefits. The SUFA opposes this proposal and argues that the current system is consistent with the practice in other fire fighter units. (See UX# 62)

FINDINGS

The record does not demonstrate a compelling need to change the present

contractual provision. Current retirement practices in Scarsdale are comparable with other similar fire fighter units.

11) COMPENSATORY TIME-KELLY DAYS

The Village proposed a change in the manner in which Kelly Days are computed. They suggest that the amount of compensatory time earned be limited by eliminating sick, personal and vacation leave time earned from the hours scheduled to work. (See VX# 21-23) The SUFA rejects this demand and argues that the present system is supported by the practice in the fire fighting profession in the comparable and contiguous areas. (See UX# 70, 74-75)

FINDINGS

The record does not support a change in the method of computing Kelly Days.

12) RETROACTIVITY

(See Item Number One, Salary, for award in this area)

13) UNIFORM ALLOWANCES

The SUFA seeks increases in uniform allowances while the village

proposes a continuation of the status quo.

FINDINGS

The record does not demonstrate that the current uniform practice in Scarsdale is inconsistent with the practice of other villages and towns. Absent a showing of need in this area the proposal is rejected.

14) DISCIPLINARY PROCEDURE

The SUFA seeks a change in the current disciplinary process. In essence that change would replace the internal administrative process with the use of neutral hearing officers. The Village rejects any changes in this area.

FINDINGS

An examination of the record and the current practice in fire fighter departments throughout Westchester County does not support the position of SUFA in this area. Accordingly, their proposal is hereby rejected.

15) EDUCATIONAL BENEFITS

The SUFA seeks increases in certain education benefit allowances for the completion of certain college course work. The Village opposes any changes in this area.

FINDINGS

The record does not support the position of the SUFA in this area. The practice in Scarsdale is such that no change is warranted. The current system is consistent with the practice as demonstrated throughout Westchester County.

A-W-A-R-D

The successor Agreement between the Village of Scarsdale and the Scarsdale Uniformed Firefighters Association shall commence on June 1, 1988 and expire on May 31, 1990. That Agreement shall continue in full force and effect except as modified below.

1) SALARY:

- a) Effective June 1, 1988 all firefighters shall receive an increase of \$2,100.00. In grade increases shall be determined as in the past.
- b) Effective June 1, 1989 all firefighters shall receive an increase of \$2,100.00. In grade increases shall be determined as in the past.
- c) The starting salary shall remain the same.
- d) Effective June 1, 1988 the Fire Captains will receive \$46,121.
- e) Effective June 1, 1989 the Fire Captains will receive \$48,767.

2) INSURANCES:

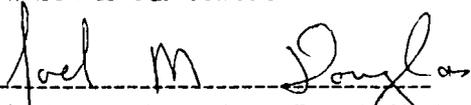
- a) Effective the date of this Award, the Village shall not be obligated to pay Health Insurance premiums for any new hire who is eligible to receive comparable coverage through a plan provided by his or her spouse. Should the new hire's spouse lose eligibility, the new hire will be immediately entitled to coverage by the Village.
- b) Any unit member shall be permitted to receive an "in lieu" payment of 25 percent of the applicable premium provided that he or she demonstrates to the Employer and to SUFA that he or she is covered by another health insurance plan.

AFFIRMATION

State of New York:

We, Joel M. Douglas, Thomas F. DeSoye and Terence M. O'Neil, do hereby affirm upon our oath as Arbitrators that we are the individuals described in and who executed this instrument which is our Award.

Date: June 13, 1989



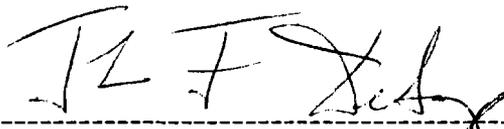
Joel M. Douglas, Ph.D. Panel Chairman

Date: 6/20/89



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

Date: 6/21/89



Thomas F. DeSoye, Esq., Employee Panel Member

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