

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

-----XXX MAR 24 1997

In the Matter of the Interest Arbitration Between:

VILLAGE OF HERKIMER

CONCILIATION

-Employer-

-and-

FINAL AND BINDING OPINION AND
AWARD OF TRIPARTITE
ARBITRATION PANEL

VILLAGE OF HERKIMER
PERMANENT FIREMAN'S BENEVOLENT ASSOCIATION
-Union-

PERB Case No: IA 94-021; M 94-030

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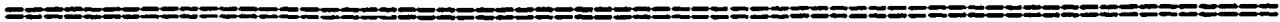
THE PUBLIC ARBITRATION PANEL MEMBERS ARE:

- PUBLIC PANEL MEMBER & CHAIRMAN: Joel M. Douglas, Ph.D.
- PUBLIC EMPLOYEE PANEL MEMBER: Donald Killian
Vice President
NYS Professional Fire Fighters
- PUBLIC EMPLOYER PANEL MEMBER: William M. Wallens, Esq.
Roemer Wallens & Mineaux, PC

APPEARANCES:

- Village of Herkimer: Elayne G. Gold, Esq.
Roemer, Wallins & Mineaux, P.C.
- Permanent Firemen's Benevolent Association: Edward J. Fennell

DATE: MAY 21, 1996



BACKGROUND:

The Village of Herkimer is located in Herkimer County, N.Y., and has a population of approximately 8,000. The Fire Department operates 24 hours per day and seven days per week. The bargaining unit at impasse consists of 16 full time fire fighters excluding the Chief. (JX #15) The Village also negotiates with two other bargaining units, the CSEA and the Charles W. Soule Police Benevolent Association (hereinafter "PBA"). The previous Collective Bargaining Agreement covered the period June 1, 1992 through May 31, 1994. (JX #30) Mediation efforts were conducted however no successor agreement was reached and accordingly on November 8, 1994 the Village filed a Petition for Compulsory Interest Arbitration. (JX #10). A response was filed by the Union on November 15, 1994. (JX #2) This impasse marked the first time in the eighteen year bargaining relationship between the parties that they were unable to successfully negotiate a successor agreement. Accordingly the Union requested that great weight be afforded by the PANEL prior bargaining history, the existing CBA and the existing wage and benefit structure.

Pursuant to the provisions of Section 209.4 of the Civil Service Law, and in accordance with the rules of the Public Employment Relations Board, an Interest Arbitration PANEL was designated for the purpose of making a just and reasonable determination on the matters in dispute between the VILLAGE OF HERKIMER ("VILLAGE") and the PERMANENT FIREMEN'S BENEVOLENT ASSOCIATION OF THE VILLAGE OF HERKIMER (hereinafter "Association" of "Union") A hearing was held in Herkimer Village Hall on June 28, 1995 during which time 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 the parties filed briefs. An executive session was held in Albany, NY on October 25, 1995 during which time the PANEL deliberated on each issue and carefully and fully considered all the data, exhibits and testimony received from both parties. Several draft Awards were then circulated between the PANEL until a consensus was arrived at.

The results of those deliberations are contained in the AWARD that constitutes the PANEL's best judgment as to a just and reasonable solution of the impasse. Those issues presented by the parties that are not specifically dealt with in this AWARD were also carefully considered by the PUBLIC ARBITRATION PANEL, but rejected in their entirety. For each issue, the discussion below presents the positions of the parties and the PANEL's analysis and conclusion. This Opinion, and its accompanying Award, are based on the record as thus constituted.

In arriving at this Award the PANEL considered the following

statutory guidelines contained in Section 209.4 of the Act:

(v) the PUBLIC ARBITRATION PANEL shall make a just and reasonable determination of the matters in dispute.

In arriving at its determination, the PANEL shall specify the basis for its findings, taking into consideration, in addition to any other relevant factors, the following:

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 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 or 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 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.

(vi) the determination of the PUBLIC ARBITRATION PANEL shall be final and binding upon the parties for the period prescribed by the PANEL, but in no event shall such period exceed two years from the termination date of any previous collective bargaining agreement or if there is no previous collective bargaining agreement then for a period not to exceed two years from the date of determination by the PANEL. Such determination shall not be subject to the approval of any local legislative body or other municipal authority.

ISSUES AT IMPASSE:

At the hearings the parties agreed to submit the following issues for evaluation and decision by the PANEL.¹ Those issues included:

VILLAGE PROPOSALS:

- 1) Eliminate reimbursement for union expenses incurred at meetings.
- 2) Eliminate union related leave if such leave will cause overtime.
- 3) Deletion of minim manning language.
- 4) Reduction in personnel leave.
- 5) Reduce maximum vacation accruals.
- 6) Establish a two tier vacation accrual schedule.
- 7) Employee health insurance contributions including establishment of two tier schedule.
- 8) Calculate longevity as a fixed amount and not a percentage.
- 9) Modification in retirement incentive.
- 10) Mandate substantiation of uniform cleaning allowance.
- 11) Establish Family Medical Leave of Absence policy.
- 12) Establish American With Disabilities policy.
- 13) Management Rights.
- 14) General Municipal Law Section 207 a policy.
- 15) Amend work chart to reflect 10/14 schedule.

UNION PROPOSALS:

- 1) Equalization of pay with Herkimer PBA.
 - 2) Minimum callback pay.
 - 3) Retirement incentive.
 - 4) Wage adjustment.
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Where possible the aforementioned demands and subsequent recommendations have been consolidated to address the needs of both parties. Accordingly the numbering set forth by the parties in their presentation to the PANEL, and in their post-hearing briefs, has not been strictly adhered to.

¹ Many of the Village proposals had numerous components. The number of employer demands presented to the panel numbered twenty five; however, for the sake of succinctness, they have been consolidated into their major categories.

ISSUE NUMBER ONE

DURATION OF AGREEMENT ARTICLE XXIII

Both parties expressed a need to extend the two year statutory mandate on the length of an Interest Arbitration Award. The Union included a three year CBA as part of their demands while the Village stated that a multi-year CBA that lengthened the statutory two year period would be acceptable.² The PANEL was cognizant of their statutory obligation not to exceed the two year mandate and therefore instructed the advocates to obtain written permission from both the Union and the Village authorizing the PANEL to exceed the two year limit³. Such documentation extending the two year maximum contract period was obtained and accordingly is affixed as Appendix "A".

✓ **PANEL RECOMMENDATION**

- 1) The June 1, 1991- May 31, 1994 CBA shall remain in effect except as modified in this Opinion and Award.
- 2) This Award will cover the four year period: June 1, 1994 - May 31, 1998.

ISSUE NUMBER TWO

COMPENSATION ARTICLE IV

The Union is seeking a change in the pay schedule to reflect equalization with the Herkimer PBA and additionally a wage increase equal to five percent for each of three years of the successor contract.⁴ They argue that based on the statutory criteria and cited comparables the Village has the ability to fund that increase.⁵ The Village seeks a wage freeze for fiscal year 1994 -

²It was noted that had the two year time period not been extended, the instant Award would cover a duration already expired.

³ See, Section 209.4(v) of the Civil Service Law.

⁴ That two other Village bargaining units, the CSEA and the PBA, were in the midst of contract negotiations at the same time as the instant impasse also played a role in these determinations.

⁵ No consensus was reached at the hearing as to what constituted comparability. The parties did agree to use Little Falls, Johnstown, and Ilion as comparable to Herkimer, but differed as to other jurisdictions. The Union

1995 and a three percent increase in 1995 -1996. They note that the three percent offer is contingent on obtaining cost containment relief in other areas of the CBA. Additionally the Village argues that their proposal is far more consistent with the comparables than that of the Union.⁶

With respect to the statutory criteria, the Union claims the Village's arguments pertaining to ability to pay are inaccurate and that the testimony of the unions primary financial witness, Edward J. Fennell, must be deemed controlling. The Union alleges that an unappropriated fund balance of \$102,600 exists. (UX #21) Additionally the contingency fund in the 1995-1996 General Fund Budget was \$222,906. (UX #20). The Village, at present, still retains a future taxing ability of \$579,567. (UX #20) The Union contends that these revenues and balances amounts are sufficient to fund the increase sought by the Union for this relatively small bargaining unit. The Association also seeks increases in the present salary rank differential and longevity schedule but at the hearing dropped their demand for PBA parity.

The Village rejects any changes in the salary structure as proposed by the Union and argues that the longevity and rank differentials sought by the Union adds substantially to the overall financial costs of total compensation. The Village argues that over the years they have continuously paid the market rate and now proposes a two year salary package that provides for a wage freeze in year one and an increase of three percent in year two. The submit that the testimony of the Village's financial witness, Village Administrator Robert Smithson, must be credited. Directly related to the salary issue is the Village's demand for health care containment. The Village argues that to fund any salary increases they must obtain relief in the health care and leave package areas.

PANEL RECOMMENDATION

Wage and salary determination is far from an exact science; however the PANEL was guided by the criteria set forth in the Taylor Law. Among other factors these included the;

... 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

postulated that Cortland, Elmira, Fulton, Gloversville, Hornell, Ithaca, Oneida, Oneonta, and Oswego were comparable to Herkimer. The Village argued in opposite.

⁶The record mandated that the comparables cited by the Village be deemed more appropriate by the Panel Chairman than those offered by the Union. (See, EX #C of Employer's closing brief.)

services or requiring similar skills under similar working conditions and with employees generally in public and private employment in comparable communities. Section 209.4 of the Act:

Most notable in this regard was the recently negotiated Agreement between the Village of Herkimer and THE CHARLES W. SOULE POLICE BENEVOLENT ASSOCIATION OF THE VILLAGE OF HERKIMER.

Additional criteria included:

... (b) the interests and welfare of the public and the financial ability of the public employer to pay; Section 209.4 of the Act:

This evaluation was based primarily on the financial data and records submitted by the principle financial witnesses, Smithson and Fennell, and while they disagreed over the import of certain indicators, their expertise and analysis was noted and most helpful. The Village noted that to fund the union's demand of three five percent increase the total additional cost to the Village would be in excess of \$66,000. (JX #15) See also Tab Exhibit "E" of Village brief.

Past negotiations as reflected in the bargaining history and settlements reached over the past eighteen years of bargaining history were also critical in the formulation of this Award. Wherever possible, great weight was afforded to the preservation of benefits obtained at the bargaining table either party. It appears that the parties at impasse have traditionally negotiated CBAs that are either identical or very close to the total compensation package offered the PBA. While little would be gained in examining various wage increases awarded from the 1970's through the present, it is sufficient to note that the similarities between the two unions are striking and that this factor played a significant role in the formulation of this Award. (See Exhibit D of Village Closing Brief)

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. Section 209.4 of the Act:

The comparables agreed upon by the parties, those cited by the Village, other recently negotiated CBAs in Herkimer (the CSEA and the PBA), were considered central by the PANEL.⁷

⁷ The CSEA and the Village reached a MOA for the period 1994 - 1997 providing for the following raises: June 1, 1994 - 2%, June 1, 1995 - 3%, June 1, 1996 3%, June 1, 1997 - 4%.

The PANEL has considered all the cited statutory criteria and addresses first the issue of comparability. Geographical proximity is a critical element of comparability. The PANEL has considered the area comparables and notes that settlements and Awards in the "Central New York and UpState" area ranged in the area of three percent. Most compelling was the settlement negotiated between the Village of Herkimer and the PBA. That CBA provided for the following adjustments; June 1, 1994, 2% increase; June 1, 1995 3% increase; June 1, 1996 3% increase; and, June 1, 1997 4% increase. Additionally, in each of those years officers in the titles of Sergeant, Investigator and Captain received adjustments of 0.50%.

The testimony of Edward Fennell, on behalf of the Association, was credited in terms of computing "ability to pay". The Association made a detailed argument that there were resources contained within the 1995 - 1996 budget to fund their demands. They cite the contingency fund of \$222,906 as one such account where monies are available. (UX #20) That the Village was not at their constitutional tax limit for FY 96 and has a tax margin of \$579,567 was noted. As of May 1994 the Village had exhausted 19.39% of its constitutional debt limit. (UX #20, p.8) The Village 1995 -1996 budget of \$4,175,127 reflects increases over the previous three years. The cost of a one percent wage adjustment for the members of the fire fighter bargaining unit is \$5,513.00. (Table 9 of UX #20) The impact of that raise on the 1995 -1996 General Budget is 0.13% while the impact on the 1995-196 Real Property Tax Levy is 0.19%. It is the opinion of the PANEL that when considered in its entirety, the salary adjustments awarded herein are within the financial ability of the employer to so pay.

The PANEL was aware of the relationship that existed between the PBA and the fire fighters and used the recently negotiated PBA CBA in fashioning their recommendation. The PANEL was also cognizant of the fact that during the past eighteen years during which period the parties collectively bargained there were four occasions when the parties settled without a wage adjustment. While it is noted that in those contracts other benefits in lieu of salary were obtained, i.e., vacation and leave accruals, that factor was deemed significant.

The PANEL is aware that every financial increase awarded has some final impact; however, the Village's ability to pay coupled with various cost containment provisions awarded by the PANEL are such that it is the opinion of the PUBLIC ARBITRATION PANEL that the salary Award herein is fair and equitable. Based upon the evidence and arguments presented the PUBLIC ARBITRATION PANEL awards salary adjustments as follows:

- ✓ a) Effective June 1, 1994 fire fighters shall receive a two percent wage increase.
- ✓ b) Effective June 1, 1995 fire fighters shall receive a

three percent wage increase.

- ✓ c) Effective June 1, 1996 fire fighters shall receive a three percent wage increase. Effective June 1, 1996 Deputy Chiefs shall receive a 3.25 percent wage increase.
 - ✓ d) Effective June 1, 1997 fire fighters shall receive a four percent wage increase. Effective June 1, 1997 Deputy Chiefs shall receive a 4.25 percent wage increase.
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ARTICLE XIII LONGEVITY:

The Association argues that the present longevity schedule is inadequate and for seniority and experience purposes places them at a disadvantage. The present negotiated schedule provides the following longevity payments:

<u>AFTER YEARS OF SERVICE</u>	<u>% OF FIRE FIGHTER GRADE ONE BASE PAY</u>
4TH YEAR	1%
8TH YEAR	2%
12TH YEAR	3%
16TH YEAR	4%
20TH YEAR	5%

The Association propose changes that would reflect increases in the present schedule.

The Village argues that any increases in longevity reflect the overall compensation paid to fire fighters and that they cannot, at this time, make any changes in the longevity schedule. They rely on economic and ability to pay arguments previously set forth and insist that no longevity changes be awarded.

Discussion of the PANEL:

The record demonstrates that Herkimer fire fighters do not enjoy the same level of longevity payments as those received by several of the comparable groups. Additionally, in the context of this overall Opinion and Award, several recommendations have been put forth that will assist the Village in capping their compensation costs thereby permitting some modification in longevity. These changes in the longevity schedule serve to recognize the continued efforts and experience of the fire fighters while at the same time contribute to their overall economic security.

Additionally it is noted that the recently negotiated CBA with the Village of Herkimer PBA provided for increases in the Longevity Payment Schedule identical to those awarded below. The new

Longevity Schedule for Police Officers is as follows:

<u>AFTER YEARS OF SERVICE</u>	<u>% OF PATROLMAN GRADE ONE BASE PAY</u>
4TH YEAR	2%
8TH YEAR	3%
12TH YEAR	4%
16TH YEAR	5%
20TH YEAR	6%

It is the opinion of the PUBLIC ARBITRATION PANEL that the longevity payments Awarded herein are fair and equitable. Based upon the evidence and arguments presented the PUBLIC ARBITRATION PANEL awards longevity increases as follows:

Effective June 1, 1994 longevity shall be as follows:

<u>AFTER YEARS OF SERVICE</u>	<u>% OF FIRE FIGHTER GRADE ONE BASE PAY</u>
4TH YEAR	2%
8TH YEAR	3%
12TH YEAR	4%
16TH YEAR	5%
20TH YEAR	6%

ISSUE NUMBER THREE:

MEDICAL, HOSPITAL AND DENTAL INSURANCE ARTICLE XI

The Village is seeking relief in the health insurance area and argues that these changes are necessary to fund any increase in the general salary schedule. They are demanding that all employees be required to contribute to the cost of their health insurance. They note that in 1992 -1993 the cost for employees on the individual plan was \$131.65 per month and \$358.80 for the family plan. An increase of over 42% was noted in the 1995 -1996 payment schedule for the individual plan. The individual plan now costs \$187.01 per month while the family plan rose by 31.8 % to 472.89 per month. (Village Exhibit #10, p 3.) Since no new fire department employees have been hired since June 1992 no employees are required to contribute any funding towards their health insurance. The testimony of Village Administrator Smithson was that the Village can no longer afford such a generous health package. The Village argues that these types of changes are consistent with those in surrounding Villages including Johnstown and Little Falls where employees do contribute towards their insurance packages. (Village Exhibit #10)

The Association rejects any change in either health insurance contributions or any other portion of the plan and argues that the comparables are such that all of the Village's proposals must be

rejected. The Union contends that to require contributions to the plans on the part of employees not only places an undue hardship on the individual fire fighter but also represents an attempt to shift the health care payment plan from employer to employee.

Discussion of the PANEL:

The issue of rising health care insurance costs remains one of the most difficult in contract negotiations. The well-documented increase in premiums has resulted in a plethora of attempts to reduce costs and to seek creative financial solutions to this ever complex problem. The parties in the instant dispute have presented meritorious arguments as to this issue, that while representing opposing points of view, focuses in on the same areas -- how can we best reduce the overall costs of health insurance while at the same time continue to maintain a certain quality benefit level? Solutions to the costs of health care insurance funding are complex and generally fall into attempts to increase deductibles, limit access, rely more on generic products, obtain employee co-payment, and the like.

It must be further stressed that this health care section cannot be read in isolation but is part and parcel of the entire economic Award and must be so considered. The changes set forth below while not identical to those contained in the newly negotiated Village - PBA CBA, they are sufficiently parallel so as to mandate their inclusion on the basis of comparability. It is the opinion of the PUBLIC ARBITRATION PANEL that the health care cost award contained herein is fair and equitable. Based upon the evidence and arguments presented the PUBLIC ARBITRATION PANEL awards as follows:

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1) Following provisions shall not apply to employees hired on or after the ratification date of this Agreement.

A. The employer shall provide to all retired employees between the ages of 60 - 65, their spouses, dependent children to age 23, the full cost of hospital and medical insurance.

B. Current members of the fire department with ten or more years of service with the HERKIMER Fire Department as of the date of this Award shall continue to convert one day of unused sick leave for one month of health insurance premium up to age sixty or the age that Federal Medicare may take over, up to a maximum of 170 days, after which the provisions of Article XI, Section 1 shall apply. (List eligible officers)

C. Current members of the fire department with less than ten years of service with the Herkimer Fire Department at the time of the date of this Award shall convert two days of unused sick leave for one month of health insurance premium up to age sixty or the age that Federal Medicare may take over, after which the provisions of Article XI, Section 1 shall apply.

D. All employees may accrue up to 192 days for the purposes of sick leave conversion. (List eligible officers)

E. Employees hired after the date of this AGREEMENT may convert unused sick leave to a cash bank at the rate of pay at the time of retirement which may be applied to health insurance premium cost at retirement, if the retiree so elects. If the retiree elects not to utilize payment for unused sick leave for health insurance purposes, the retiree may convert said unused sick leave to cash as provided elsewhere in the Agreement. Article XI, Section 3 A. shall not apply to employees hired after the date of this Award.

F. DUAL COVERAGE - Except for current members of the bargaining unit whose spouse is employed by the Village, if a member and spouse are employed by the Village, the Village shall provide either one (1) family plan or two (2) individual plans. The members shall not be required to co-contribute for health insurance as provided in the agreement. These employees shall not be entitled to the buy-out as provided in Section 7 of Article XI.

ISSUE FIVE ARTICLE VIII
VACATION SCHEDULE:

The Village seeks to amend the present contractual vacation schedule CBA and effectively increase employee work time. They argue that the present practice is too expensive and that relief is essential. A cap of five weeks instead of the present contractual six weeks, as argued by Smithson, would be the new maximum. (Village X# 1, @p. 17). Additionally, the Village seeks an end to the practice of vacation sell backs currently contained in Article VIII, Section 5. and the creation of a two tier vacation system whereby new employees would receive a less generous vacation schedule. In support of these concessions the village argues the need for additional cost savings measures as articulated in their overall economic demands.

The Union strenuously argues in favor of preserving the existing

schedule and submits that the present schedule was negotiated in the 1985 -1986 CBA when the Union accepted a zero wage offer in exchange for the modified vacation and personal leave day schedule. They also note that the Village Police enjoy the same vacation schedule as the fire fighters currently have.

Discussion of the PANEL:

The PANEL is aware of the costs of increasing or decreasing the vacation schedule and is of the mind set that any modifications in the existing schedule is unwarranted at this time. Citing comparability the demands of the Village, while of concern, are not sustainable in terms of reducing the overall schedule. The present practice of granting vacation based upon a forty hour work week is common in fire fighter contracts. The PANEL was further concerned with the argument that the existing work force in essence "bought" their vacation schedule out of funds available in the 1985-1986 round of collective bargaining. To obliterate that benefit at this time is unwarranted.

However, the establishment of a two tier vacation schedule, a practice growing in popularity in both the private and public sector appears warranted at this time. While the rate of hire into the Fire Department has been minimal over the past several years, the present work force will be retiring and at that time this two tier system should assist the Village in reducing their overall benefits costs while at the same time preserving the benefits of the existing employees.

Furthermore, it is noted that the newly ratified Village of Herkimer PBA CBA provides for the following two tier vacation schedule for all employees hired after the ratification date of the new Agreement.

POLICE CBA - EMPLOYEES HIRED AFTER AGREEMENT RATIFICATION DATE:

YEARS OF SERVICE

VACATION

1 YEAR	2 WEEKS
5 YEARS	3 WEEKS
6 YEARS	3 WEEKS PLUS (1) DAY
7 YEARS	3 WEEKS PLUS (2) DAYS
8 YEARS	3 WEEKS PLUS (3) DAYS
9 YEARS	3 WEEKS PLUS (4) DAYS
10 YEARS	4 WEEKS

It is the opinion of the PUBLIC ARBITRATION PANEL that the vacation schedule Awarded herein for new workers is fair and equitable. Based upon the evidence and arguments presented the PUBLIC ARBITRATION PANEL awards longevity increases as follows:

Modify current vacation schedule to provide that employees hired

after date of Contract ratification shall earn vacation as follows;

✓ FIRE FIGHTERS CBA - EMPLOYEES HIRED AFTER AGREEMENT RATIFICATION
DATE: _____

YEARS OF SERVICE

VACATION

1 YEAR	2 WEEKS
5 YEARS	3 WEEKS
6 YEARS	3 WEEKS PLUS (1) DAY
7 YEARS	3 WEEKS PLUS (2) DAYS
8 YEARS	3 WEEKS PLUS (3) DAYS
9 YEARS	3 WEEKS PLUS (4) DAYS
10 YEARS	4 WEEKS

There shall be no change in the vacation schedule of the existing work force.

ISSUE NUMBER SIX
GENERAL MUNICIPAL LAW SECTION 207-a

The Village has proposed the incorporation of a new Article in the CBA that would provide for a General Municipal Law (GML) "bare bones policy". (See Village Ex #1 @ p.10) This provision, as viewed by the Village, would set forth a procedure for granting and reviewing certain benefit entitlements.

The Union does not oppose this proposal but suggests that the GML 207-a policy recently negotiated in the City of Johnstown between the Fire fighters and the City serve as the basis of the Herkimer language.

Discussion of the PANEL:

The record demonstrates that the Village of Herkimer Fire Fighters CBA does not contain a GML Section 207-a provision. The unrefuted rationale set forth by the employer in defense of said policy is persuasive and although the Union seeks identical language as the new City of Johnstown Fire Fighter CBA policy, the demands of equity and parity mandate that the Section 207-a policy contained in the Herkimer PBA CBA be incorporated into the fire fighters agreement.

It is the opinion of the PUBLIC ARBITRATION PANEL that the Section 207-a policy contained in the Herkimer PBA Agreement is fair and equitable and should be incorporated into the Herkimer fire fighter's CBA. Such a policy enables both parties to review and enforce their respective rights as pertains to certain mandated benefits. Additionally by providing a forum to question such rights, the contractualization of Section 207-a offers the parties

the possibility of avoiding costly and prolonged litigation. Based upon the evidence and arguments presented the PUBLIC ARBITRATION PANEL awards longevity increases as follows:

The successor CBA shall contain a new Article establishing a General Municipal Law Section 207-a policy. Said policy shall be identical to the one currently found in the Village of Herkimer PBA Collective Bargaining Agreement.
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ISSUE SEVEN NEW CONTRACT ARTICLE
AMERICANS WITH DISABILITIES ACT.

The Village of Herkimer has proposed the inclusion of a new contract section setting forth the parties obligations with respect to the Americans With Disability Act. The Union did not offer any objections to the proposed language and accordingly the following ADA language is set forth below for incorporation into the successor Agreement.

It is the opinion of the PUBLIC ARBITRATION PANEL that the following ADA language is fair and equitable and should be incorporated into the Herkimer fire fighter's CBA. It is noted that the identical ADA language is contained in the newly negotiated Village of Herkimer 1994 -1997 PBA CBA.

With respect to compliance by the employer with the provisions of ADA and regulations issued pursuant to the Act, the Union agrees that it shall have the same obligations as the employer with respect to reasonable accommodation.

With respect to an employer attempt to a provide a reasonable accommodation in accordance with he provisions of the Act and regulations issued pursuant to the Act, the Union shall have an affirmative obligation to assist the employer in achieving any such accommodation.

ISSUE EIGHT NEW CONTRACT ARTICLE
FAMILY MEDICAL LEAVE ACT (FMLA)

✓ The Village of Herkimer has proposed the inclusion of a new contract section setting forth the parties obligations with respect to the Family Medical Leave Act. They claim that this clause is a benefit to the Village and does not in any manner constitute a harm to any employee. The Union did not offer any substantive objections

to the proposed language but is concerned over the continuation of the existing leave benefits. Accordingly the following FMLA language is set forth below for incorporation into the successor Agreement.

It is the opinion of the PUBLIC ARBITRATION PANEL that the following FMLA language is fair and equitable and should be incorporated into the Herkimer fire fighter's CBA. It is noted that the identical FMLA language is contained in the newly negotiated Village of Herkimer 1994 -1997 PBA CBA.

Family leave shall be granted to an eligible employee to a total of twelve work weeks of leave during any twelve month period for the following:

A. Because of the birth of a son or daughter of the employee and in order to care for such son or daughter;

B. Because of the placement of a son or daughter with the employee for adoption or foster care;

C. In order to care for the spouse, son, daughter, or parent of the employee, if such spouse, son, daughter, or parent has a serious health condition;

D. Because of a serious health condition that makes the employee unable to perform the functions of the position of such employee;

An eligible employee shall be required to use accrued paid vacation, personal leave, or family leave of the employee for the leave provided under paragraph A, B, or C above. An eligible employee may be required to use accrued paid vacation leave, personal leave or sick leave for leave provided under paragraph C or D above for any part of the twelve week period of such leave.

Village shall maintain coverage for health and dental insurance to an employee on leave pursuant to this section for the duration of the twelve week period, and under the conditions coverage would have been provided if the employee had continued in the employment continuously for the duration of such leave. The Village may recover the premium that the Village paid for maintaining coverage of the employee under such group health plan during any period of unpaid leave if the employee fails to return from leave after the twelve week period and (1) the employee fails to return for a reason other than

continuation, recurrence, or (2) onset of a serious health condition that entitles the employee to leave under subparagraph C or D above, or, other circumstances beyond the control of the employee.

Nothing contained in this provision shall otherwise limit the obligations of the employer or the employee under the provision of the Family Medical Leave Act.

ISSUE NINE ARTICLE XIV
PENSIONS RETIREMENT INCENTIVE

The Village seeks to convert the existing retirement incentive into a authentic retirement inducement by limiting "the window" when the potential retiree can be eligible for said benefit. The present system provides for an open ended window whereby any potential retiree can claim the benefit (\$4,000,00) at any point after completion of twenty years of service. The Village seeks to couple the retirement incentive into the twenty year retirement plan. The Village Police have such a plan.

The Union is opposed to such a plan and argues in favor of preserving the existing benefit. In the alternative the Union proposes the continuation of the existing \$4,000.00 incentive but establishing a contract provision whereby the potential retiree can work for the \$4,000.00.

Discussion of the PANEL:

Retirement incentives are widely found in public employment and are traditionally geared towards a definable precise triggering event.⁸ For example, the recently enacted State of New York retirement incentive bill provides for limited windows under which an employee must make the retirement decision. The incentive serves as a catalyst to retire thereby assisting the employee to obtain one-time benefits while permitting the employer to reduce overall labor costs. The present open-ended Herkimer plan can not be adequately described as an incentive. The proposal set forth below does not diminish the existing incentive for any unit member who actually intends to retire after twenty years of service. Those employees with twenty years or more service have ninety days to decide to take advantage of the proposal and accept the \$4,000.00 retirement incentive. If they elect to stay beyond the twenty years they are free to do so but the concept of a retirement incentive is no longer relevant since they have elected not to retire.

⁸ No comparables were found supporting the Union demand of allowing individual employees to work for the \$4,000.00 retirement incentive.

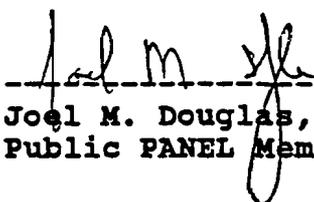
It is the opinion of the PUBLIC ARBITRATION PANEL that the following retirement incentive is fair and equitable, is analogous to that contained in the Village PBA Agreement, and should be incorporated into the Herkimer fire fighter's CBA.

✓ A) Effective the date of ratification an employee who retires after his 20th year but before his 21st year and who has notified the Village Board in writing between January 1st thru March 31st of the fiscal year prior to retirement shall receive a \$4,000.00 retirement incentive payment upon retirement.

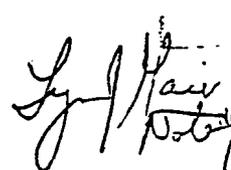
✓ B) Current employees who have been employed more than 20 year shall have a one time window to receive said retirement incentive. This window shall be in existence for ninety days after the date of ratification of this Agreement. These employee must notify the Village Board in writing of their intent to retire during this 90 day window.

PANEL NOTATION

This PANEL has made Awards on specific proposals as set out supra in this Arbitration Award. Any proposals not awarded or rejected in this Award are hereby rejected. All other provisions and language contained in the 1992 - 1994 Agreement are hereby continued, except as specifically modified in this Award.

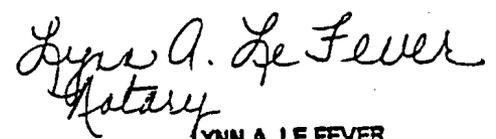


Joel M. Douglas, Ph.D.
Public PANEL Member & Chairman


LYNN J. MAIER
Notary Public, State of New York
No. 02 MA 4697866
Qualified in Westchester County
Commission Expires ~~March 29, 1997~~
October 3,

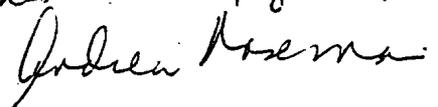


Donald C. Killan
Employee PANEL Member
I concur/dissent with the above Award


LYNN A. LE FEVER
Notary Public, State of New York
Qualified in Onon. Co. No. 4867768
Commission Expires Aug. 18, 1996



William M. Wallens, Esq.
Employer PANEL Member
I concur/dissent with the above Award

Sworn to before me
this 24th day of May,

ANDREA S. NASEMAN
Notary Public, State of New York
No. 4773541
Qualified in Albany County
Commission Expires ~~10/31/96~~

AFFIRMATION

PURSUANT TO ARTICLE 75 OF THE CIVIL PRACTICE LAW AND RULES OF NEW YORK STATE, I AFFIRM THAT I HAVE EXECUTED THE FOREGOING AS AND FOR MY OPINION AND AWARD IN THIS MATTER.

Lynn J. Maier
LYNN J. MAIER
Notary Public, State of New York
No. 02 MA 4697866
Qualified in Westchester County
Commission Expires October 31, 1997

Chairman

Joel M. Douglas

Joel M. Douglas, Ph.D.
Public PANEL Member &

LYNN J. MAIER
Notary Public, State of New York
No. 02 MA 4697866
Qualified in Westchester County
Commission Expires March 30, 1997

PURSUANT TO ARTICLE 75 OF THE CIVIL PRACTICE LAW AND RULES OF NEW YORK STATE, I AFFIRM THAT I HAVE EXECUTED THE FOREGOING AS AND FOR MY OPINION AND AWARD IN THIS MATTER.

Sworn to before me
this 8th day of April, 1996
Kathleen A. Gancarz

Donald C. Killian

Donald C. Killian
Employee PANEL Member

KATHLEEN A. GANCARZ
Notary Public in the State of New York
Qualified in Onondaga County No. 4962078
My Commission Expires February 12, 1998

PURSUANT TO ARTICLE 75 OF THE CIVIL PRACTICE LAW AND RULES OF NEW YORK STATE, I AFFIRM THAT I HAVE EXECUTED THE FOREGOING AS AND FOR MY OPINION AND AWARD IN THIS MATTER.

Sworn to before me
this 24th day of
May, 1996.
Andrea S. NASEMAN

William M. Wallens

William M. Wallens, Esq.
Employer PANEL Member

ANDREA S. NASEMAN
Notary Public, State of New York
No. 4773541
Qualified in Albany County
Commission Expires 10/31/96

STIPULATION

By and Between

The Village of Herkimer
and
The Permanent Firemen's Benevolent Association

WHEREAS, the parties hereto are signatories to a Collective Bargaining Agreement for the term June 1, 1991 through May 31, 1994, and

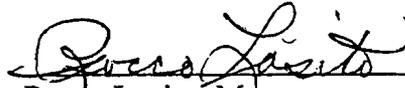
WHEREAS, the parties commenced negotiations for a successor Collective Bargaining Agreement, which negotiations proceeded to interest arbitration pursuant to the procedures of the Public Employment Relations Board, and

WHEREAS, the parties hereto wish to consent to and grant the Interest Arbitration Panel jurisdiction to issue a four (4) year award covering the period June 1, 1994 through May 31, 1998.

NOW, for the purpose of promoting cooperative and harmonious relations, the parties hereto agree that the Interest Arbitration Panel, consisting of Joel M. Douglas, Ph.D., William M. Wallens, Esq., and Donald Killian, are hereby empowered and granted the authority to issue an award for the period June 1, 1994 through May 31, 1998, and hereby consent to said award.

Dated:

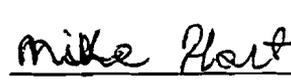
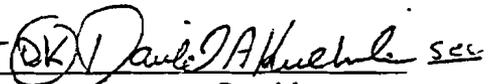
4/4/96



Rocco Losito, Mayor

Dated:

4-4-96

, President
Permanent Firemen's Benevolent Association